IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**Civil Action No.**
THE CITY OF MONTGOMERY,	)	**2:07-cv-686**
ARTHUR BAYLOR, Chief of Police,	)	
BOBBY BRIGHT, Mayor, in	)	
their individual	)	
and official capacities,	)	
	)	
Defendant.	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Candida Stokes is a former police officer with the City of Montgomery. She has filed several causes of action against defendants due to their failure to reinstate her after the completion of her Family Medical Leave and defendants' subsequent termination of her. Stokes claims include claims under 1) the Americans With Disabilities Act, 42 U.S.C. § 12102 et seq, (ADA) and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (§504) for disability discrimination and retaliation; 2) Title VII of the Civil Rights Act 42 U.S.C. § 2000e *et seq.,* as amended, for gender discrimination and retaliation; and 3) claims under the Family Medical Leave Act 29 U.S.C.§ 2611, *et. seq*. (FMLA) for interference and retaliation.

Defendants have filed a motion for summary judgment seeking to dismiss Stokes' claims under the ADA, Stokes' Title VII claims, and Stokes' FMLA claim for retaliation. Stokes has filed a counter motion for summary judgment as to Stokes' FMLA interference claim. However, Defendants motion did not address this claim. Defendants have made no argument regarding Stokes' § 504 claims.

This Court should deny Defendants' Motion for Summary Judgment. As will be discussed below, defendants have failed to negate an issue of fact as to plaintiff's claims. Further, Stokes has presented substantial evidence which highlights the several issues of fact contained in this litigation. Thus, summary judgment should be denied.[1]

II. PLAINTIFF'S STATEMENT OF FACTS

Candida Stokes was hired by the Montgomery Police Department in February 2002 as a police officer. It is undisputed that she was an excellent officer and that she performed her job well. Pl. Exh. 2, deposition of Kevin J. Murphy p.

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[1]As an initial matter, Defendant's Motion for Summary Judgment failed to adhere to this Court's Order; i,e, the format of the Motion. Defendants' evidentiary submission fails to identify, with specificity, the evidence upon which they are relying.

159:8- 10.[2] While employed by the City, Stokes received at least one promotion including a promotion to the rank of corporal, as well as several merit raises. Pl. Exh. 1, Declaration of Plaintiff.

As a police officer in the Montgomery Police Department, Stokes performed the following duties: patrolling her own route and making appropriate arrests and stops on that route. As a Corporal, Stokes performed the duties of a police officer as well as the following supervisory duties: performing roll call, inspecting officers and patrol vehicles at roll call, assigning patrol routes for officers on her shift, assisting in creating work schedules for shift officers, training other officers, and responding to certain types of calls which required a supervisor to be present and then completing the appropriate paperwork for those calls. As Corporal, Stokes was eligible for transfer and promotion to different divisions within the Department. Pl. Exh. 1. Further, the job description for a police officer is nineteen pages long and includes such basic duties as, *inter alia*, reading and writing, listening and communicating, walking, carrying, lifting, bending and stooping, analysising situations and exercising judgment and thinking. Pl. Exh. 17,

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[2] Consistent with this Court's Order, "Murphy deposition, p. 159:8" refers to page 159, line 8 of Murphy's deposition. In order to reduce the amount of paper in this matter, plaintiff is not re-submitting the documents and depositions which were already submitted as exhibits to Plaintiff's Motion for Summary Judgment. Exhibit numbers 1-15 referenced in this Response reference Exhibits 1-15 of Plaintiff's Motion for Summary Judgment.

Job Description.

For all relevant time periods Author Baylor has been the Chief of Police. Baylor has the authority to approve or disapprove discipline. Murphy depo. p. 42:3-12. Lieutenant Colonel Kevin Murphy was the division commander of the patrol division and, accordingly also exercised authority over Stokes. Murphy depo. pp. 27:15 - 28:2.

For all relevant time periods, Bobby Bright has been the Mayor the Montgomery. As such he exercises the authority to discipline and terminate City employees, including Stokes. Murphy depo. pp. 45:8 - 46:7; Pl. Exh. 15, deposition of Mayor Bobby Bright pp. 13:10-14; 20:2-6. The City of Montgomery is a recipient of Federal financial assistance. Bright depo. p. 16:8-15.

A. Stokes Takes Approved FMLA Leave.

On December 19, 2005, saddened by her mother's recent death and a divorce, Stokes attempted to take her life (while off duty) by ingesting several Tylenol. It is undisputed that at the time of her action, Stokes was both under extreme stress and chronically sleep deprived. Pl. Exh. 1.; Pl. Exh. 24, Supplemental Declaration of Plaintiff. Stokes was immediately hospitalized for her depression for approximately two weeks. Thereafter, she received outpatient mental health treatment for her condition. Pl. Exh. 1. At the time Stokes attempted suicide, she had a total of eleven years experience in police work. Pl. Exh. 24.

Defendants were aware of Stokes suicide attempt by the time she had been admitted into the hospital. Pl. Exh. 4, deposition of John Carnell, Risk Manager for the City, pp. 15:1- 16:3; 16:23 -17:5. As a result of her condition, it is undisputed that Stokes was a person a serious health condition under the FMLA. With full knowledge of Stokes' suicide attempt, defendants granted Stokes FMLA due to her serious health condition. Pl. Exh. 3, deposition of Arthur Baylor p. 99:12-20; Murphy depo. p. 99:9-19. The leave began on December 19, 2005, and it expired on January 12, 2006. Pl. Exh. 5. Bright and Baylor approved the leave. Pl. Exh. 6; Bright depo. p. 83:13-17.

Stokes had be receiving treatment for depression for several years prior to her suicide attempt. Pl. Exh. 24.

B. Stokes Is Released to Work Without Restrictions, but Defendants Will Not Allow Her to Return.

Stokes finished her outpatient program and received a certificate of completion. Around the scheduled end of her FMLA leave, Stokes reported to work with the certificate, having been released to work without restrictions by Harwood, her treating physician. Pl. Exh. 1. However, Defendants refused to allow Stokes to return to work. No one from the City told Stokes that they needed further information from her treating physician nor did anyone ask Stokes' permission to call such professionals. Pl. Exh. 1.

Instead, on January 13, Defendants placed Stokes on administrative leave, pending Stokes' undergoing a psychological evaluation by Dr. David Schaffer, a physician selected by Defendants. Pl. Exh. 1; Pl. Exh. 7; Carnell depo. p. 17:6-17.

Defendants' requirement that Stokes undergo a fitness for duty evaluation was inconsistent with the manner in which Defendants treated other city employees returning from FMLA. Carnell, who over sees fitness for duty evaluations, acknowledged that it was uncommon to require a police officer who was returning from FMLA leave o secure a fitness for duty prior to returning to work. Carnell depo. p. 7:6-9; 26:5 - 28:18; 31:12 - 32:1. Baylor could not identify any other employee who had not been returned to his or her previous position. Baylor depo. p. 101:5-23.

After learning of Stokes' suicide attempt, Defendants contacted the Alabama Peace Officers Standards and Training Commission (APOSTC) because Murphy believed that Stokes was no longer qualified to work as a police office since she had attempted suicide. APOSTC is responsible for certifying all police officers in the state to be sworn law enforcement officers. Ala. Code § 36-21-40 *et.seq*. Defendants learned that APOSTC had no rule prohibiting the continued certification/employment of officers who had attempted suicide. Murphy depo p. 67:18 - 69:20.

C. Stokes Is Found Fit For Duty, But Defendants Still Will Not Allow Her To Work As A Police Officer.

On January 20, 2006, Dr. David Schaffer, D.O., Ph.D, a psychiatrist and Medical Director of Park Place Psychiatry, performed the fitness for duty evaluation of Stokes. At the completion of the evaluation, Dr. Schaffer released Stokes to return to her position as a police office, without restrictions. Dr. Schaffer wrote that, at the request of Risk Management for the City of Montgomery, he conducted a fitness for duty evaluation of Stokes and that Stokes was capable of returning to her job, stating "Once again, it is my professional opinion that she is fit to all duties as a police officer." Pl. Exh. 9. Dr. Schaffer also found that an important consideration in the cause of Stokes' suicide attempt was her extreme stress and the fact that she had been chronically deprived of sleep. Pl. Exh. 9.

Defendants still did not allow Stokes to return to her position. Instead, on January 24, 2006, Defendants placed Stokes on Administrative Duties (sic) until further notice and refused to allow her to wear her police uniform or be armed. Murphy and Baylor made this decision. While on administrative duties, Stokes was limited to working in the police department headquarters and was not allowed to work on the street. Pl Exh. 1; Pl. Exh. 10; Murphy depo. pp. 48:17- 49:9; 118:19- 119:20; 133:15 - 134:4; 135:3 -136:3. While performing Administrative Duties, Stokes duties were limited to taking telephone calls and stamping reports. Pl. Ex. 1. There is no evidence that Defendants ever attempted to contact Stokes' treating physician to secure any further information or to address any questions they may have had about Stokes ability to return to work. Pl. Exh. 1; Murphy depo. pp. 63:23 - 64:4; Bright depo. pp. 104:15-108:2.

On February 1, 2006, Defendants notified Stokes that she was being investigated for disciplinary action due to her suicide attempt. The charges against her were that she violated the duty to remain fit and the duties of responsible employment. Stokes is the only officer to be charged with failing to keep fit for duty. Murphy depo., p. 72:3-10. Defendants utilize discretion in determining whether a police officer should be charged with violating a work place rule. Murphy depo. p. 18:7- 20:5.

During the investigation, Stokes explained the events which gave rise to her suicide attempt. She also explained that she was fit to return to duty and that she continued to receive treatment for her depression. Stokes asserted that she had not violated any rules in that, among other things, she had sought treatment for her condition. Pl. Exh. 24. Stokes had never before attempted suicide. Pl. Exh. 24.

On February 2, 2006, Defendants decided to deny a previous request Stokes made for a lateral transfer to another department. At the time defendants denied this transfer, Stokes was on a list of persons eligible for a transfer. Pl. Exh. 1; Pl. Exh. 24. The basis for Defendants' refusal to allow the transfer was that:

> Corporal Stokes is currently being evaluated by a physician and licensed counselor in order to determine her fitness for duty as a Montgomery Police Officer. Due to these circumstances, Corporal Stokes is ineligible for a transfer to another division at the present moment.

Pl. Exh. 11.

However, the City has no actual rule that prohibits employees who are undergoing a fitness for duty evaluation from transferring to another position. Murphy depo pp. 131:7 - 132:6. Further, by February 2, 2006, Stokes had already been cleared to return to work by defendants' physician. On February 22, 2006, Stokes again requested to be transferred to the Detective Division. Pl. Exh. 12. It is undisputed that she was never afforded this transfer. Pl. Exh. 24.

By February 3, 2006, Defendants had made the decision to terminate Stokes for attempting to commit suicide. Carnell depo. pp19:17-20:8: 33:7- 34:8. Defendants communicated their decision to Carnell who, in turn, communicated it to Linda Holmberg, a counselor at defendants employee assistance program (EAP) who was then counseling Stokes. Carnell depo. pp. 54:18 - 55:15; Pl. Exh. 16, Linda Holmberg's Notes from Counseling Sessions.

On February 27, 2006, Dr. Harwood wrote a letter to defendants stating that Stokes was capable of returning to work as a police officer. He urged Defendants to contact him if they had any questions. Pl. Exh. 13. On February 28, 2006, Linda Holmberg wrote a letter stating that Stokes was fit to return to duty and that she was not a threat to herself of others. Pl. Exh 8.

D. Defendants Terminated Stokes.

Although defendants had already decided to terminate Stokes, her case was heard at a trial board on February 28, 2006. It is undisputed that Stokes protested defendants' refusal to return to her position as a violation of the ADA. Carnell depo. pp. 60:21 - 61:1. Stokes had a reasonable belief that she was covered by the ADA based on her research of the law. Pl. Exh. 24.

After the hearing, the trial board found that Stokes had not violated the duty to remain fit but that she had violated the duties of responsible employment rule. Baylor then told Bright— incorrectly— that the Board had upheld both charges. Baylor depo. pp. 164:19 - 165:2; 179:21 - 182:13. While defendants had already decided to terminate Stokes, Baylor officially recommended that Stokes be terminated on both charges. Baylor depo. pp. 106:7 - 107:4. Baylor had the authority to accept or reject the board's findings. Murphy depo. p. 42:10 - 43:12.

On May 9, 2006, Defendants officially terminated Stokes. Pl. Exh. 14. The undisputed reason that Defendants terminated Stokes was the same reason that entitled Stokes to FMLA leave– because she attempted suicide. The decision-makers included Defendant Baylor and Defendant Bright, who was the final decision maker. Pl. Exh. 14; Bright depo, p.13:10-16; 20:2-6.

When asked for all of the reasons Stokes was terminated, Bright did not testify that it was because Stokes broke a rule. Rather, he testified as follows:

A. I really don't know all of the reasons, to be honest with you. I don't even know the facts, as we sit here.

Q. Do you know any of the reasons?

A. I know, I think based on what I was - I don't know if I need to talk about attorney-client. But based on my meeting with my attorney, and I recall the major fact is that - it is Deputy Stokes?

Q. Yes.

A. She's a deputy?

Q. Yes.

A. She committed suicide - or attempted to commit suicide.

Q. Okay.

A. That to me, in and of itself, is justifiable grounds not to be a police officer.

Q. Tell me why.

A. Ooh man. I've been trained in police work, and you just don't want someone with that instability carrying a lethal weapon and representing our police department out on the streets of Montgomery. It's a tough enough job for a completely okay person.

Q. What do you mean a completely okay person?

A. A person that doesn't have the depression and the mentality to commit suicide.

Bright depo. p. 22:1 - 23: 9.

Defendants acknowledged that they perceived Stokes as mentally and emotionally unstable. Baylor depo. p. 130:1-7. They also were aware of her depression and her need for counseling. Baylor depo. pp. 215:17 - 216:2. Defendants testified that Stokes' suicide attempt adversely affected her ability to perform all of her police officer duties. Murphy depo pp. 112:16 - 114:8; Bright depo. p. 37:7 - 17. Baylor, too, admitted that the basis for his recommendation was that Stokes had attempted suicide and that, consequently, he thought she was a potential safety risk. Baylor depo. pp. 33:7 - 34:11; 107:8 -14; Carnell depo. p. 21:1-3; Bright depo. pp. 22:14-19; 71:15-18. Defendants speculated that Stokes might shoot someone and that she was no longer the type of police officer defendants wanted out on the street. Bright depo. p. 23:10 - 26:8, p. 31:21 - :12, 39:12 - 40:19. Thus, regardless of the fact that Stokes was repeatedly cleared to return to work, defendants speculated that Stokes might again attempt suicide and that she was, therefore, a liability. Baylor depo. pp. 80:2- 82:19; Bright depo. pp.22:22 - 24:19; 31:21 - 32:12. There was nothing Stokes or her doctors could have done to which would have lead to Defendants decision to return Stokes to her position.

> Q: What, if anything, could Ms. Stokes have done to put you at ease that she wasn't going to be a risk or a liability? It sounds like probably nothing.
>
> MR. BOYLE: Object to the form.
>
> A. I can't think of anything.

Murphy depo. p. 64:9-15. Due to her suicide attempt Murphy "would not feel comfortable" with Stokes working for the City. Murphy depo. p. 65:8-9.

It is also undisputed that Defendants had no evidence that Stokes was not fully qualified to return to her position as a police officer. Carnell testified:

Q. Did you have any evidence that she was not fit for duty?

A. At the time, no. I have to go basically on what they tell me.

Q. At any point, have you had any evidence that Deputy Stokes we notified to return to her job?

A. No.

Carnell depo. p. 18:10-17. And,

Q. Did you have any evidence at all that she might attempt it again?

A. No, I didn't.

Carnell depo. p. 21:4-6. Baylor admitted that he had no evidence that would contradict any of the medical assessments of Stokes' ability to work, including the City's fitness for duty evaluation, which stated that Stokes was capable of returning to work as a police officer without restrictions. Baylor depo. pp. 82:20 - 83:18; 117:11-16; 187:18 - 190:12. Mayor Bright also admitted that he had no medical evidence that would support the decision to terminate Stokes. Bright depo. pp. 32:23 - 33:14; 79:18- 80:13. Carnell admitted that Stokes' termination was unfair and that there was a risk that any officer might attempt suicide. Carnell depo. p. 24:13-20; 42:16-19. Carnell testified that he has no current concern about Stokes' ability to return to work. Carnell depo. p. 76:10-15. Defendants perceived Stokes as mentally unstable. Murphy depo. p. 60:6-8.

E. Defendants Do Not Monitor the Physical or Mental Health of Other Police Officers.

Contrary to their treatment of Stokes, defendants do not monitor the physical or mental health of other police officers. They do not attempt to assure that other police officers remain fit for duty. Murphy depo p. 80:7- 18. Defendants take no steps to assure that they do not hire police officers who have attempted suicide. Murphy depo. pp. 74:17 - 75:21. Bright depo. p. 39:1-3. Defendants admit that any police officer could attempt suicide and that they have no way of knowing whether other police officers have attempted suicide either before or while working for the city. Baylor depo. pp. 111:22 - 112:15; 116:9 - 117:10; Carnell depo. pp. 25:14 -26:4; p. 9:6-12. Nor does the city attempt to ascertain whether any officers have attempted suicide. Murphy depo. p. 77:8 - 79:2; 150:8-12; Bright depo p. 9:6-12. Additionally, police officers who are addicted to alcohol and/or illegal drugs are not necessarily terminated. Such officers may be suspended for 45 days or be allowed to enter treatment. Baylor depo. pp. 119:4-20; 205:18 - 210:3; Carnell depo. pp. 13:1-11; 44:13 - 45:15.

F. Male Police Officers Who Have Engaged In Serious Misconduct Have Not Been Terminated.

Further, some male officers have actually engaged in behavior involving aggression, but have been allowed to continue working as police officers. Carnell depo, pp. 30:7 -14; 44:13 -47:1; 48:11- 49:14. The following are some examples of male officers who have been charged with violating the rule of duties of responsible employment and one male officer with mental health concerns.

On August 8, 2007, Officer B. placed a prisoner in the back of his police car. Pl. Exh. 18, Officer B. Employee File Documents. After buckling the prisoner in with the seatbelt, Officer B. punched the prisoner in the face. The incident was recorded by the in-car camera. Officer B. was charged with violating the Duties of Responsible Employment. According to Murphy, "after viewing the recording several times, the punch to Mr. Brown's face appeared to be a 'cheap shot.'... Officer B. admitted the video clearly illustrates that he violated police department rules and regulations." Pl. Exh. 18. While the discipline action was pending, Officer B. was assigned to work at the jail. There is no mention that he was not allowed to wear his uniform or carry his badge and service weapon while on duty at the jail. The disciplinary trial board voted unanimously to recommend termination. However, the Mayor rejected the recommendation and instead disciplined Officer B. with a 15 day suspension and mandatory anger management sessions at the EAP. After completing his suspension, Officer B. was to return to his former position in the Patrol Division. Pl. Exh. 18.

On December 28, 2005, Captain J.D. McQueen spoke with Corporal B. Pl. Exh. 19, Corporal B Employee File Documents. "[B.] explained to me that he was having some problems coping with his current assignment at the school and that he had problems controlling his temper, particularly when dealing with the students and at some times he felt that he wanted to hurt them. He went on to say that he could not help himself, but he had a severe problem with cursing at the students and their parents when he had to deal with a situation in the school." Pl. Exh. 19. Corporal B. was placed on sick leave because he was "under stress and taking his frustrations out on the public." Pl. Exh. 19. At the recommendation of his superiors, Corporal B. met with Linda Holmberg at EAP three times between December 29, 2005 and January 12, 2006. Corporal B. also met with a psychiatrist and his personal physician, who prescribed anti-depressants. Corporal B. agreed to continue the medications and see Holmberg once a week. Holmberg and Corporal B.'s psychiatrist spoke with Risk Manager John Carnell and recommended returning Corporal B. to full duty. Carnell recommended that Corporal B. be returned to normal duty. By Memorandum dated January 13, 2006, Major Reid requested that Chief Baylor return Corporal B. to regular duty on January 17, 2006. Baylor approved this request. Pl. Exh. 19.

On or about October 2, 1999, Officer M. tested positive for cocaine during a Military Drug Screening by the Alabama Army Reserves. Pl. Exh. 20, Officer M Employee File Documents. Officer M. did not inform anyone at the MPD about his test results. During the investigation, Officer M. lied to the military and to Internal Affairs about how he came to have cocaine in his system. Pl. Exh. 20. Officer M. was charged with violations of the Duties of Responsible Employment and the Drug and Alcohol Abuse Policy. Mayor Bright approved a suspension of 45 days. Pl. Exh. 20.

On November 17, 2004, Mayor Bright approved a 30 day suspension of Captain W. Pl. Exh. 21, Captain W Employee File Documents. Captain W. had been charged with violating three departmental rules- Duties of Responsible Employment, Association with the Criminal Element, and Computer Use and Security. The basis of the first two rule violations was Captain W.'s association with Mr. J.W., who had been charged with Violation of Gun Control Act Falsifying Federal Firearms Records, Smuggling False Declaration / Importation of Firearm Magazines Introducing Magazines by False Customs Declaration. Mr. J.W. had been arrested by the MPD for Theft of Property in the first degree. Captain W. admitted in taped interviews that he knew had been associated with Mr. J.W. for the last 18 years and that the association included buying a firearm from Mr. J.W. and discussing departmental business with Mr. J.W. over the phone and in person. Pl. Exh. 21. The computer use charges were related to an email sent by Captain W. titled 'How to unfold the flag' which included images of a white female exposing her breast. Pl. Exh. 21.

On February 23, 2007, Officer W. conducted a traffic stop of a driver who was suspected of driving under the influence. Pl. Exh. 22, Officer W Employee File Documents. While administering a field sobriety test, Officer W. ordered the driver to perform a "chicken dance" where he was required to squat and flap his arms as if he were a chicken. The incident was captured on video tape. Pl. Exh. 22. Officer W. was charged with violating the Duties of Responsible Employment. Mayor Bright approved a 35 day suspension of Officer W. Pl. Exh. 22.

On July 8, 2006, Corporal D. arrested an individual for giving a false name to a law enforcement officer. Pl. Exh. 23, Corporal D Employee File Documents. The individual initially resisted arrest, but was ultimately subdued and placed in handcuffs. Four other officers besides Corporal D. were present. After the individual was cuffed, Corporal D. hit him in the face and neck with his fist and baton and allegedly choked him. Pl. Exh. 23. Corporal D. was charged with violating the Duties of Responsible Employment and the Duty in the Use of Force.

The Board unanimously voted to terminate Corporal D. Mayor Bright, however, decided to suspend Corporal D. for 30 days and require him to undergo EAP counseling for anger management. Pl. Exh. 23.

III. SUMMARY JUDGMENT STANDARD

The Federal Rules of Civil Procedure provide that summary judgment is to be granted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, the basic issue in a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646, (11th Cir. 1997) (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512 (1986). "As the moving party, [the defendant] has the burden of showing the absence of a genuine issue of material fact, and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *See Hairston v. Gainesville Sun Publishing Co.*, 9 F.3d 913, 918 (11th Cir. 1993). The District Court cannot weigh conflicting evidence or make credibility determinations. Instead, '"[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [her] favor.'" *Hairston*, 9 F.3d at 919 (*quoting Anderson*, 477 U.S. at 255). Thus, in order to survive summary judgment, Stokes is not required to prove the merits of her case, only to show that, when viewing the evidence in the light most favorable to her, there is the possibility that a reasonable jury would find for Stokes.

IV. DEFENDANTS VIOLATED STOKES' RIGHTS UNDER THE ADA AND SECTION 504 OF THE REHABILITATION ACT.

Stokes' claims under the ADA and §504 include her claims of disparate treatment, disparate impact, defendants' failure to accommodate and retaliation. Defendants' motion seeks to dismiss only Stokes' disparate treatment and impact claims. Defendants do not mention §504 and their brief does not address Stokes' reasonable accommodation or disability related retaliation claim.

As will be demonstrated, summary judgment should be denied as to Stokes' claims under the ADA and §504. Contrary to defendants' contentions, Stokes meets the definition of disability. She also was qualified to work as a police officer. And, finally, defendants articulated reasons are entitled to no weight as defendants essentially acknowledge that the reason that they discriminated against Stokes was due to their speculation regarding her abilities.

A. The Purpose of the ADA and §504 was to Prohibit Discrimination based on Stereotypical Fears.

Congress enacted the ADA and §504 to assure persons with disabilities equal employment opportunities despite an employer's fears and misperceptions about the effect of a person's disability. Congress found that some 43,000,000 Americans have one or more physical or mental disabilities and that discrimination persists in the critical area, including "outright intentional exclusion. . . overprotective rules and policies. . . and exclusionary qualification standards and criteria. . . ." 42 U.S.C. § 12101. Thus, the ADA was intended to "to provide clear, strong, consistent enforceable standards for addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b).

Stokes' ADA claims are brought under Titles I (employment) and II (public services, including employment). The applicable standards to determine whether discrimination and retaliation exist are identical under both Titles.

§504 offers also protection against disability discrimination and retaliation to individuals employed by entities which receive federal financial assistance. 29 U.S.C. § 794 states that:

> No otherwise qualified individual with a disability in the United States. . . shall, solely by reason of her disability, be excluded from the participation in, be denied the

> benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .[3]

Significant similarities exists between the ADA and §504. The definition of disability is identical under both statutes.[4] §504 incorporates the substantive standards under Title I of the ADA for determining the existence of discrimination and retaliation in the area of employment. 29 U.S.C. § 794(d).

B. Stokes is Disabled.

2. Stokes has an actual disability.

Stokes is a person with a disability, as that term is defined under the ADA and §504. 42 U.S.C. § 12202(2); 29 U.S.C. 706(8)(B). Under both statutes, "disability" is: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual;(b) a record of such impairment; or (c) being regarded as having such an impairment. A physical or mental impairment is broadly defined and it includes any mental or psychological disorder. 29 C.F.R. § 1630.3(h). S*ee also School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987). Major life activities include, *inter alia,* caring for one's self, sleeping, working, and eating. 29 C.F.R. §1630.2(i).[5]

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[3]This statute also provides that the head of each such agency shall have the authority to promulgate such regulations as may be necessary to carry out § 504.

[4]Pursuant to the statute, Congress directed the development of regulations implementing § 504. These regulations are entitled to a high degree of difference; and their presumed authority is virtually without question. *Toyota Motor Manufacturing, Ky., v. Williams,* 534 U.S. 184 (2002). *See, also*, *Fenny v. Dakota Minnesota and Eastern R.R. Co.*, 327 F.3d 707 (8th Cir. 2003), *Bragdon v. Abbott*, 524 U.S. 624, 118 S. Ct. 2196 (1998).

The term "substantially limited" includes one who is significantly restricted as to the manner or duration she can perform the activity. 29 C.F.R. § 1630.2(j) The U.S. Supreme Court has explained that "substantial limitation" does not mean that an individual must be unable to perform the function. *Bragdon v. Abbott*, 524 U.S. 624, 118 S. Ct. 2196 (1998). Rather, the Court held that "the Act addresses substantial limitations on major life activities, not utter inabilities." *Id.*

Defendants' motion glosses over the issue as to whether Stokes is actually disabled. Instead of meeting their burden presenting any evidence that Stokes is not substantially limited in any major life activity, defendants simply assert that Stokes is not disabled because she was capable of returning to work. Since defendants have failed to offer such evidence on this point so as to negate an issue of fact, summary judgment should be denied. Indeed, "the onus is upon the parties to formulate arguments." *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587,

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[5]*EEOC v. United Parcel Service, Inc.*, 249 F.3d 557, 562 (6th Cir. 2001), *cert. denied*, 535 U.S. 904 (2002); stating that "self care" constitutes a major life activity for purposes of the ADA); *Hatfield v. Quantum Chemical Corporation*, 920 F. Supp. 108 (S.D. Tex. 1996) (noting that "the inability to care for oneself is simply the collective inability to do a combination of the various physical activities that make up the abstraction of 'caring for oneself.'").

599 (11th Cir. 1995).

Additionally, defendants' argument misses the central purpose of §504 and the ADA which is to **assure the employment** of persons with disabilities who have conditions which substantially limit their life in other ways.[6] Both § 504 and the ADA anticipates that employees who are otherwise significantly limited– but able to work– are protected. It would make little sense to enact federal laws protecting persons with disabilities in the area of employment if an employee's ability to work made her exempt from the ADA's or §504's protection. Certainly defendants cannot believe that the ADA and §504 only protect people who are unable to return to work. *See*, *Milton v. Bob Maddox Chrysler, Plymouth, Inc*., 868 F.Supp. 320, 325 (S.D. Ga., 1994)(Court rejected an employer's argument that a plaintiff with a cancerous tumor, was not "disabled" because he was both able to work and engage in the same activities he performed prior to developing the condition.)

In the event, however, that this Court determines that defendants have complied with their burden of proof on this issue, Stokes has presented evidence that she is substantially limited in the major life activity of caring for herself. As

[6]If, and only if, Stokes is not substantially limited in her ability to perform any other major life activity, then an examination may be made as to whether she is substantially limited in her ability to work. *See* App. 29 C.F.R. § 1630.2(j).

explained by the Second Circuit, in *Peters v. Baldwin Union Free School District*, 320 F.3d 164, 168 (2d Cir. 2003), "[a] mental illness that impels one to suicide can be viewed as a paradigmatic instance of inability to care for oneself." While *Peters* addressed the issue of whether an employer perceived an employee who had attempted suicide, there is no reason why such analysis does not apply to the issue of whether that same employee is actually disabled.

2. Defendants Regarded Stokes as Disabled.

Defendants also regarded Stokes as disabled. Persons are "regarded as having an impairment if they are treated . . . as if they were handicapped -- regardless of their actual condition." *Harris v. Thigpen*, 941 F.2d 1495, 1524 (11th Cir. 1991). *See also Williams v. Motorola*, 303 F.3d 1284, 1290 (11th Cir. 2002) In *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139, 2150, 144 L. Ed. (1999), the Supreme Court identified two ways in which an individual meets the "regarded as" prong: (1) the covered entity mistakenly believes that the individual has a physical impairment that substantially limits one or more major life activities, or (2) the covered entity mistakenly believes that an actual, non-limiting impairment substantially limits one or more major life activities. 29 C.F.R. § 1630.2(l), 56 Fed. Reg. 35, 726 35, 735 (1991).

The U.S. Supreme Court has discussed the importance of protecting persons who are perceived as disabled, stating.

> Congress was as concerned about the affect of an impairment on others as it was about the affect on the individual. . . such an impairment might not limit a person's physical or mental capabilities but it could nonetheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment. . . Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as the physical limitations that flow from the actual impairment.

According to both the ADA's legislative history and the EEOC's Interpretive Guidance, while the "perceived as" test will be satisfied if, "an employer makes an employment decision based on a myth, fear, or stereotype," reliance on a myth or stereotype is not required under the ADA. *Taylor v. Pathmark Store, Inc.* 1999 WL 312384 (3d Cir. 1999) 29 C.F.R. § 1630(L), Appendix. *See also*, *Tucker and Boldstein, Legal Rights of Persons With Disabilities: An Analysis of Federal Law*, L.R.P. Publications, 1993. The Appendix reads:

> As the legislative history notes, sociologists have identified common attitudinal barriers that frequently result in employers excluding individuals with disabilities. These include concerns regarding productivity, safety, insurance, liability, attendance, cost of accommodation and accessibility, workers' compensation costs and acceptance by coworkers and

> customers.
>
> Therefore, if an individual can show that an employer or other covered entity made an employment decision because of perception of disability based on "myth, fear or stereotype," the individual will satisfy the "regarded as" part of the definition of disability.

Given the stigma of mental illness, several courts have held that an individual with a mental illness may have been perceived as disabled and refused to grant summary judgment. See, *Prichard v. Southern Company Services*, 93 F.3d 1130 (11th Cir. 1996); *Doe v. New York University*, 666 F.2d 761 (2d Cir. 1981) (a student with "borderline personality" disorder was likely handicapped under § 504 as "NYU's refusal to readmit her on the ground that she poses an unacceptable risk); *McKenzie v. Douala*, 242 F.3d 967 (10th Cir. 2001) (plaintiff with post-traumatic stress disorder was regarded as substantially limited in her ability to work in law enforcement); *Holihan v. Lucky Stores, Inc.*, 87 F.3d 362 (9th Cir. 1996), *cert. denied* 520 U.S. 1162 (1997) (a trier of fact could conclude the employer had regarded the plaintiff as being disabled under the ADA because of his mental illnesses); *Sites v. McKenzie*, 423 F. Supp. 1190, 1197 (N.D. W.Va. 1976) (plaintiff regarded as having a mental impairment); *Liff v. Secretary of Transportation*, 1994 WL 579912 (D.D.C. 1994) (a trier of fact could reasonably find the plaintiff is "regarded as having an impairment" as plaintiff's depression caused the defendant a loss of "trust and confidence" by a depressive episode); *McWilliams v. AT & T Information Systems, Inc.*,728 F. Supp. 1186, 1191 (W.D. Pa. 1990) (actions of plaintiff's supervisor provided basis of reasonable inference that plaintiff was regarded as handicapped, even though plaintiff claimed that she had fully recovered from illness).

While defendants assert that they did not perceive Stokes as disabled, they have failed to offer sufficient evidence in support of their contention so as to negate an issue of fact. Rather, defendants argue "(p)laintiff has offered no testimony nor any evidence that the City of Montgomery perceives her to have a disability." Doc. 36, p. 11. However, this is not the appropriate standard for ruling on a motion a summary judgment. It is defendants' burden to affirmatively demonstrate that there exists no issue of fact as to defendants' perception of Stokes.

Stokes has presented sufficient evidence that defendants perceived her as disabled. Stokes presented evidence that she was perceived as having mental impairment– serious depression– which caused her hospitalization and suicide attempt. Defendants considered her mentally and emotionally unstable and prone to "shooting" somebody. Defendants testimony during the depositions is replete with sterotypic beliefs concerning their perception of Stokes based on her mental illness. At the very least, this evidence demonstrates that she was perceived as having a substantial limitation in using good judgment and caring for herself. And, both the Sixth and Second Circuits have determined that such evidence raises an issue of fact as to defendants' perception of employee who attempted suicide. *Peters v. Baldwin Union Free School District*, *supra.; Chandler v. Specialty Tires of America*, 134 Fed. Appx. 921 (6th Cir. 2005).

The only evidence offered by defendants on this issue is that they considered Stokes a possible safety risk or that Stokes violated certain work place rules. For the reasons explained above, this evidence does not negate an issue of fact concerning whether defendants perceived Stokes as disabled. First, this evidence is not really relevant to the issue of whether defendants perceived Stokes as disabled. Rather, it is more relevant to the issue of whether Stokes was qualified and/or whether defendants had a legitimate business rational for terminating Stokes.

Additionally, defendants' assertion that they considered Stokes a safety risk relates directly to her suicide attempt which, undisputedly, occurred due to her depression. The undisputed evidence that defendants considered Stokes mentally and emotionally unstable due to her suicide attempt actually supports Stokes' contention that defendants perceived her as disabled. Defendants cannot avoid compliance with the ADA and §504 by characterizing Stokes as a rule breaker because she displayed systems of serious depression, especially given that Stokes' actions occurred while off duty.

Defendants also concentrate only on their perception of Stokes as it relates to the major life activity of working. As the court observed in *Peters*, an employee who attempted suicide presents "sufficient evidence of a different limitation - one relating to her ability to care for herself." *Peters* at 168.[7]

Additionally, Stokes has presented undisputed evidence that defendants terminated Stokes because they perceived her as too mentally and emotionally unstable to be able to perform any of the activities contained in her job description. Stokes' job description includes a laundry list of very basic activities. Such activities include *inter alia*, the ability to remember information, the ability to communicate and listen, the ability to follow oral and written instructions, the ability to read and write, the ability to observe, inspect, analyze and use good judgment. The description also includes several manual tasks, including walking, lifting, stooping and carrying. By concluding that Stokes was unable to perform any of these activities, a reasonable inference exists that defendants perceived Stokes as substantially limited in performing the major life activities contained within the job description.[8] *Chandler v. Specialty Tires of America*, 134 Fed. Appx. 921 (6th Cir. 2005).

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[7]An analysis of the major life activity of working is appropriate only **after** it is determined that defendants did not perceive Stokes as limited in any other major life activity. Accordingly, when an employee is perceived to be limited in a major life activity other than working, there is no need to examine a class of jobs or a broad range of jobs. *See* App. 29 C.F.R. 1630.2(j).

Finally, even if one examines the major life activity of working, defendants' perception was not limited to Stokes' ability to perform a single job or a narrow range of jobs. Immediately after Stokes' suicide Murphy contacted APOSTC to confirm his belief that Stokes' illness would result in the revocation of her APOSTC certification. Such a certification is a requirement to work in a wide variety of jobs within the State of Alabama. See Ala. Code 36-21-40, *et seq*. Certification requires certain levels of education, physical training, and moral character. Ala. Code. 36-21-46. Thus, defendants' perception of Stokes' inability to work was not related only to a single position, but to a class or broad range of jobs. *See Fjellestad v. Pizza Hut of America, Inc.*, 16 N.D.L.R. ¶ 95 (8th Cir. 1999); *McKenzie v. Dovala*, 242 F.3d 967 (10th Cir. 2001)

3. Stokes Had A Record of An Impairment.

[8] Other evidence refutes defendants' argument that they did not perceive Stokes to be disabled includes the evidence which establishes pretext. Such evidence raises an issue of fact as to whether Stokes actually broke any work place rules.

Stokes also had a record of an impairment. Notably, defendants have not specifically discussed this prong of the definition of disability.

A person has a record of an impairment if she "has a history of, or has been misclassified... as having a mental or physical impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(2). *School Board of Nassau County, Fla. v. Arline*, 481 U.S. 1024, 107 S. Ct. 1913, 94 L. Ed.2d 519 (1987). 29 C.F.R. App. § 1630.2(k), 56 Fed. Reg. 35, 726 35 742 (1991) *Hilburn v. Murata Electronics North America, Inc.*, 181 F.3d 1220 (11th Cir. 1999), *citing* 29 C.F.R. § 1630.2(k). This aspect of the definition of disability in part, "is to ensure that people are not discriminated against because of a history of disability." 29 C.F.R. App. § 1630.2(k), 56 Fed Reg. 35, 726 35, 742 (1991). Such includes individuals who have "recovered from previously disabling conditions... but who remain vulnerable to the fears and stereotypes of their employers." *See Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 509 (7th Cir. 1998). *In re Ballay*, 482 F.2d 648, 668-689 (D.C. Cir. 1973) (discussing stigma of prior institutionalization). It is not required that the impairment be permanent. *Lloyd v. East Cleveland City School District*, 232 F. Supp. 2d 806 (N.D. Ohio 2002). If an employer relies on the information contained in a plaintiff's medical records, this is enough to satisfy this prong of the definition of disability. 29 C.F.R. App. § 1630(k), 56 Fed. Reg.

35, 726 35, 742 (1991).

Persons with a history of mental illness are especially susceptible to discrimination based on their record and/or history of such disability. Public perception includes that people with psychiatric disabilities are considered dangerous, morally corrupt, inept, weak, or even fakes. *See,* U.S. Congress, Office of Technology Assessment, *Psychiatric Disabilities, Employment, and the Americans with Disabilities Act*, OTA-BP-BBS-124 (Washington, D.C.; U.S. Government Printing Office, March 1994). In *Allen v. Heckler*, 780 F.2d 64, 66 (D.C. Cir. 1985) the Court noted that former psychiatric patients often have is the continuing stigma of being a former psychiatric patient; this disability does not disappear on discharge from the hospital. *See also*, *Dole v. N.Y. University*, 666 F.2d 761 (2d Cir. 1981); *Trugville v. Alexander*, 707 F.2d 473 (5th Cir. 1983). As explained by the court in *Liff v. Secretary of Transportation*, 1994 WL 579912, *4 (D.D.C. 1994), a person who has recovered from a history of *mental or emotional illness*,... may always be a handicapped individual under the statute). See also, *Nathanson v. Medical College of Pennsylvania*, 926 F.2d 1368, 1382 (3d Cir. 1991). "A mental illness that impels one to suicide can be viewed as a paradigmatic instance of inability to care for oneself." *Peters v. Baldwin*, 320 F.3d 164 (N.Y. 2003).

Stokes has put forth evidence demonstrating that she has a record of a disability. Stokes has a history of major depression, of a psychiatric hospitalization, and continued treatment for her depression of which defendants were aware. Bright, Murphy and Baylor testified that based on Stokes' history of mental illness, including the suicide attempt caused by her major depression, they were concerned that Stokes would again attempt suicide, put others at risk, or would otherwise be unable to perform the duties associated with her job. Thus, a reasonable inference may be made that Defendants relied on Stokes' history when they refused to allow her to return to work.

Many courts, including the Eleventh Circuit, have refused to grant summary judgment when, as here, a factual issue exists as to whether the plaintiff had a record of a disability such as a mental illness. In *Prichard v. Southern Company Services*, 93 F.3d 1130 (11th Cir. 1996), the Eleventh Circuit found that Prichard's paid and unpaid disability leave "constitute(d) significant evidence that Prichard had a record of being impaired and that SCSI regarded her as impaired." *Id.* at 1134. *See also McKenzie v. Dovala*, 242 F.3d 967 (10th Cir. 2001) (McKenzie's absence from work along with her physicians' reports, tended to show that she had a record of a disability in the major life activity of working); *Pridemore v. Rural Legal Aid Society*, 625 F. Supp. 1171, 1176 n.7 (S.D. Ohio

1985) (Employee's hospitalization for depression constituted a record of disability as the plaintiff was substantially limited in the ability to function and care for himself); *Sites v. McKenzie*, 423 F. Supp. 1190, 1197 (N.D. W.Va. 1976) (Record of mental impairment); *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 510 (7th Cir. 1998); *Barnes v. Northwest Iowa Health Center*, 238 F. Supp. 2d Ed. 1053 (N.D. Iowa 2002) (plaintiff had a record of a disability where employer revoked conditional offer based on information derived from an independent medical provider, which was based upon the employee's prior medical records).

B. Stokes is a "Qualified Individual" Under the ADA and 504.

Contrary to Defendants' argument, Stokes has presented evidence that she was qualified to perform her duties as a police officer. Further, defendants' position that Stokes is not qualified is entitled to no weight**,** as defendants failed to utilize the proper standard to conclude that Stokes was a "direct threat."

1. Stokes was Qualified to Perform The Essential Functions of a Police Officer, with, or without, a Reasonable Accommodation.

The ADA and 504 define an "qualified individual with a disability" as "an individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8)l; 29 C.F.R. § 1630.2(m). The first step is to determine if the individual satisfies the prerequisites for the position; the second step is to determine whether or not the individual can perform essential functions of the position held or desired with or without a reasonable accommodation. 29 C.F.R. § 1630(M).[9] Undisputedly, Stokes meets the educational and experiential requirements necessary to perform the functions of a corporal.

Stokes has also presented evidence that she was qualified to perform the essential functions of a police officer.[10] Stokes has presented evidence from Drs. Harwood and Schaffer, as well as from her counselor Linda Holmberg that she was capable of returning to her previous position without any restrictions. Defendants also acknowledge that they had no medical evidence that Stokes was not capable of working as a police officer.

Defendants do not point to any particular essential function which Stokes was not qualified to perform. Rather, defendants argue that they did not discriminate against Stokes because of their concerns about safety and/or liability.

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[10]Several Courts have declined to grant summary judgment where, like here, the employee presents evidence demonstrating that he or she could perform the essential functions of a position. *See Stone v. City of Mount Vernon*, 118 F.3d 92 (2d Cir. 1997); *Harris v. H & W. Contracting Co.*, 102 F.3d 516 (11th Cir. 1996); *Riel v. Electronic Data Systems Corp.*, 99 F.3d 678 (5th Cir. 1997); *Armstrong v. Lockheed Martin Beryllium Corp.*, 1997 WL 816155 (M.D. Fla. 1997); *Walton v. Mental Health Association of Southeastern Pennsylvania*, 1997 WL 717053 (E.D. Pa. 1997); *Gonsalves v. Fredericks Tool Co.,* 964 F. Supp. 616 (D. Conn. 1997); *Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1112 (8th Cir. 1995).

Defendants' primary argument appears to be that Stokes posed a "direct threat" because she allegedly was a potential liability based on her suicide attempt. Given that defendants' motion ignores the standard for determining whether an employee is a direct threat, such argument is easily refuted.

2. Stokes Was Not a "Direct Threat".

At the onset, it is worth noting that defendants seem to have confused the law surrounding "direct threat" and "discrimination". Relative to the issue of whether an employee is "qualified", an employer may defend that an employee is not qualified because he or she constitutes a liability and/or safety risk, technically known as a "direct threat". In order to use this defense, an employer must be able to demonstrate through objective medical evidence, that there exists "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." 29 C.F.R. § 1630.2(r) (1996), 42 U.S.C. § 12111(3).[11] *EEOC Enforcement Guidance on the*

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[11]*See Conference Report on S. 933, The Americans with Disabilities Act: Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 596, 101st Cong. 2d Sess. At 60 (1990), *reprinted in* 136 Cong. Rec. H4582, 4598 (daily ed. July 12, 1990); H.R. Rep. No. 485, Part 3, 101st Cong. 2d Sess. at 45 (1990) (House Judiciary Report).

Americans with Disabilities Act and Psychiatric Disabilities (March 25, 1997). *See* 42 U.S.C. § 12113(b) (1994). Consequently, an employer cannot use speculative safety concerns to justify the unnecessary exclusion of persons with disabilities. *Id.*, 29 C.F.R. pt. 1630 app. § 1630.2(r) (1996). The determination of "direct threat" must be based on an individualized assessment of the individual's present ability to perform the functions of the job, considering a reasonable medical judgment relying on the most current medical knowledge and/or best available objective evidence. *Id.* And, a decision may not be based upon speculation about the risk of harm to others or upon generalizations about a particular disability, including, but not limited to, misconceptions, ignorance, irrational fears, patronizing attitudes, or pernicious mythologies. S. Rep. No. 116, 101st Cong., 2d Sess. at 27 91990) (House Committee on Education and Labor). *See also*, *Clark v. Virginia Bd. of Bar Examiners*, 880 F. Supp. 430 (E.D. Va. 1995). As the Appendix to the ADA regulations explains,

> An employer, however, is not permitted to deny an employment opportunity to an individual with a disability merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, i.e. high probability, of substantial harm; a speculative or remote risk is insufficient.

1630.2(R) Appendix (emphasis added). Further,

> The reasons for requiring the determination of significant risk to be based on contemporaneous factors is to prevent employers from relying upon paternalistic concerns and preconceived notions as to what may or may not occur in the future "paternalistic concerns about what is best for the person with a disability cannot serve to foreclose employment opportunities.[12]

Persons who with psychiatric disabilities are entitled to specific protection. In such a case, the employer must identify the specific behavior that would pose a direct threat. Notably, an individual does not pose a "direct threat" simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability. *Id.* House Judiciary Report, *supra.* n.2, at 45. Rather, there must be "objective evidence from the person's behavior that the person [with a mental or emotional disability] has a recent history of committing overt acts or making threats which caused harm or which directly threatened harm." H.R. Rep. No. 485, Part 3, 101st Cong. 2d Sess. at 45-46 (1990 (House Judiciary Report). And, "attempting suicide does not mean that an individual poses an imminent risk of harm to herself when she returns to work." *EEOC Enforcement Guidance on the*

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[12]Ogletree, Deakins, Nash, Smoak & Stewart, Americans with Disabilities Act: Employee Rights; Employer Obligations, ¶ 4.05[3][a], at 4-62-63 (1995) (emphasis added). *Bragdon v. Abbott*, 1998 WL332958 (U.S.) *See also Rizzo v. Children's World Learning Center, Inc.* , 84 F.3d 758, 763 (5th Cir. 1996)(an issue of fact existed where plaintiff, who had a hearing impairment, and drove a bus transporting small children to a day school, was a direct threat); *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247 (9th Cir. 1999) (because objective evidence is required, the inquiry into whether one is a direct threat is a complicated, fact intensive determination).

Americans with Disabilities Act and Psychiatric Disabilities at 35, *infra* Appendix F.

Whether an individual constitutes a direct threat is a conclusion that must be made by a physician with sufficient expertise in the disability so as to make an informed decision. The Eleventh Circuit emphasized this requirement in *Lowe v. Alabama Power Co.*, 244 F.3d 1305 (11th Cir. 2001), when it rejected a determination that a plant welder who had two legs amputated was a safety risk because the decision was not based on particularized facts using the best available objective evidence.[13] And, when gathering evidence about a person's ability to work, it is critical to seek information from the employee's treating physician who is most knowledgeable about the employee's condition and actual abilities. *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (ADA), July 27, 2000.

Here, defendants cannot rely on their fears about Stokes' ability to work as a justification for their actions as defendants have not complied– even minimally– with the law in making their determination. It is undisputed that defendants refused to allow Stokes to return to work and terminated her based on their

[13]*See also, Equal Employment Opportunity Commission v. Union Pacific Railroad*, 6 F. Supp.2d 1135 (D. Idaho); *Hogan v. Bangor and Arroostook Railroad Co.*, 61 F.3d 1034 (1st Cir. 1995).

speculation that Stokes might be a liability. Defendants, who had no medical training, summarily rejected both Stokes' doctor's opinion that Stokes was qualified to return to work without restrictions, as well as the identical opinions of two other professionals, including defendants' physician. Nor is there any evidence that defendants even attempted to make an individualized assessment of Stokes' ability to work. Defendants readily admit that they made a blanket judgment that any employee who attempts suicide forfeits their job.[14] Each deponent was only able to offer vague assertions about the possibility of future liability.

In short, defendants have no medical evidence– objective or otherwise– that Stokes was a direct threat. Since defendants complied with **none** of the above requirements, their determination is entitled to no weight.

C. Defendants Discriminated Against Stokes Because of Her Disability.

The ADA and 504 prohibit an employer from discriminating against a qualified individual with a disability in virtually all areas of employment, to

[14]Many courts have held in favor of an employee with a mental illness when an employer fails to prove that the employee is truly a direct threat. *See Whitney v. Board of Education of Grand Co.*, 292 F.3d 1280 (10th Cir. 2002); *Lussier v. Runyon*, 3 AD Cases (BNA) 223, 1994 U.S. Dist. LEXIS 4668 (D. Maine 1994), *aff'd in part and vacated in part, remanded* 50 F.3d 1103 (1st Cir.), *cert denied*, 516 U.S. 815 (1995).

include failing to allow a qualified employee to return to work. *See* 42 U.S.C. § 12112(b)(5)(A) and (B). 29 C.F.R. § 1630.5 Despite the fact that Stokes was qualified to return to work as a police officer, defendants discriminated against her when they refused to return her to work and terminated her. Defendants also utilized a selection process which discriminated against Stokes. Finally, defendants failed to reasonably accommodate Plaintiff.

1. Stokes Has Presented Direct Evidence of Discrimination

While defendants are correct that in certain cases, the typical burden shifting analysis associated with *McDonald Douglas* applies, defendants ignore the fact that Stokes has presented direct evidence that defendants discriminated against her based on her disability. Defendants readily acknowledge that they refused to allow Stokes to return to work and terminated Stokes because she attempted to commit suicide. Since it is undisputed that Stokes' attempt was caused by her depression, the unavoidable conclusion is that defendants terminated Stokes due to her disability.[15]

Since Stokes has presented direct evidence of discrimination, defendants' motion for summary judgment must be denied as to her ADA and 504 claims.

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[15] This conclusion is also unavoidable even if one accepts defendants' argument that they terminated Stokes because she broke a department rule, under a mixed motive analysis.

Direct evidence is evidence which, if believed, would prove the existence of a fact in issue *without inference or presumption*. In an employment discrimination case, it is evidence which on its face, explains an employer's motive for taking the action which is challenged in the litigation. *See, E.E.O.C. v. Alton Packaging Corp.*, 901 F.2d 920, 923 (11th Cir. 1990) (In a direct evidence case, the plaintiff must produce direct testimony that the employer acted with discriminatory motive); *Burns v. Gadsden State Community College*, 908 F.2d 1512, 1518 (11th Cir. 1990) ("Such evidence, if believed, proves the existence of a fact in issue without inference or presumption."); *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1558 n.13 (11th Cir. 1988). No magic words are needed for intent to be clear. *See Russell v. Northrup Grumman Corp.*, 921 F. Supp. 143 (E.D.N.Y. 1996). Once such evidence is presented, a presumption is created that the adverse employment action taken was a product of that discriminatory intent. Thus, when confronted with direct evidence, the burden shifts to the defendant to prove by a preponderance of the evidence that the adverse action would have been taken even in the absence of discriminatory motive. *See E.E.O.C. v. Beverage Canners, Inc.*, 897 F.2d 1067, 1071 (11th Cir. 1990); *Perryman v. Johnson Products Co., Inc.*, 698 F.2d 1138, 1143 (11th Cir. 1983), *citing Lee v. Russell Co. Bd. of Educ.*, 684 F.2d 769, 774(11th Cir. 1982); *Mt. Healthy City School District Bd. of Educ. v.*

Doyle, 429 U.S. 274, 287, 97 S. Ct. 568, 576, 50 L. Ed. 2d 471 (1977).[16]

2. Stokes' Evidence Demonstrates Pretext.

Even, *arguendo*, if this Court applies the *McDonnell Douglas* framework, summary judgment is still inappropriate as an issue of fact exists regarding whether Defendants' so-called "legitimate reasons" for not returning her to work actually are a pretext for its discriminatory actions. *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 256, 101 S. Ct. 1089, 67 L. Ed.2d 207 (1981)

Defendants allege that Stokes' potential liability and the fact that her suicide attempt constituted a violation of two rules as their "legitimate" reasons for their refusal to allow Stokes to return to work. Pursuant to the Sixth Circuit's analysis in *Chandler v. Specialty Tires of America*, 134 Fed. Appx. 921 (6th Cir. 2005) such rationale must be rejected.

Chandler involved an employee who was fired after she attempted suicide.

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[16] *See Wilson v Gayfers Montgomery Fair Co.*, 953 F. Supp. 1415, 1421 (M.D. Ala. 1996); *E.E.O.C. v. Williams Electronics Games, Inc.*, 930 F. Supp. 1209 (N.D. Ill. 1996); *DeLuca v. Winer Indus., Inc.*, 53 F.3d 793, 797 (7th Cir. 1995); *Smith v. Chrysler Corp.*, 155 F.3d 799 (6th Cir. 1998); *Black v. Roadway Express, Inc.*, 297 F.3d 445 (6th Cir. 2002) (direct evidence of discrimination existed when defendant refused to provide with plaintiff with trucks that cruise control, because Roadway was aware of Black's need for such due to his knee injury); *McLeod v. Parsons Corp.*, 73 Fed. Appx. 846, 2003 WL 22097841 (6th Cir.2003) (unpublished) (an HR manager's statement that an employee was no longer able physically capable of performing the essential functions of his position constituted direct evidence). Indeed, Stokes's case is consistent with *(Rizzo v. Children's World Learning Centers, Inc.*, 84 F.3d 758 (5th Cir. 1996) where in an employer refused to allow a bus driver with a hearing the right to work in her position due to defendant's fears that she may be a safety risk).

Specialty's assertion was that it fired Chandler not because she attempted suicide, but because as a result of such, Specialty lost confidence in her. However, the Court found Speciality's position "akin to the hypothetical employer in *Teahan* attempting to justify terminating the limping employee by asserting that the employee was fired because of the noisy 'thump.'" *Chandler* at 930. Given that like here, Chandler had always been a good employee, it was inconceivable that she did not experience discrimination. As the Court explained,

> It is significant to note that, prior to her suicide attempt, Chandler was a model employee who consistently performed her job duties in a satisfactory manner. Her treating physician, Dr. Naramore, testified that Chandler's suicide would not have prevented her from returning to her job and performing her duties to her usual level of competence. Thus, a jury could find that Chandler's suicide attempt did not limit her ability to perform those duties or render her unqualified for her job. Rather, Specialty, vis a vis Beck, apparently adopted the unsupported, stereotypical assumption that a person who would commit suicide is someone who cannot take care of themselves, make reasonable decisions, or handle their basic job responsibilities. This is precisely the type of "stereotypic assumption[ ] not truly indicative of ... individual ability" decried by the United States Supreme Court and the THA. See *Sutton*, 527 U.S. at 489. Accordingly, the district court erred in distinguishing between Chandler's conduct-the attempted suicide attempt-and the possibility that Specialty perceived her to have a disability... No one at Specialty has ever provided any evidence that the suicide attempt had any actual demonstrable effect on Chandler's ability to satisfy the requirements of her job upon her return to work, nor has Specialty given any other legitimate reason for terminating her. Perceptions of disability resulting from Chandler's attempted suicide were thus the clear reason behind her termination. Accordingly, we find that no reasonable jury could conclude anything other than that Specialty terminated Chandler specifically on the basis of stereotypical assumptions

> about the disability it perceived her to have. Chandler is thus entitled to summary judgment on her THA claim.. *Id.* at 929-930

Additionally, the Sixth Circuit found that,

> Specialty has offered no evidence of a legitimate non-discriminatory reason for the termination other than to emphasize that Beck considered only her act of overdosing and not her mental condition. This unsupported explanation is not sufficient to overcome Chandler's evidence. *Id*. at 924

Likewise, defendants here are trying to recast Stokes' attempted suicide as a rule violation. Defendants cannot avoid complying with the ADA and Section 504 by "criminalizing" so to speak, the condition which gave rise to Stokes' entitlement to protection under these statutes.

In addition to the evidence which demonstrates that defendants' safety concerns were baseless, Stokes has presented other evidence demonstrating pretext. First, when asked for all of the reasons Stokes was terminated, Bright did not state that it was because she violated a work place rule. Instead, Bright testified first that he did not know, and then because Stokes attempted suicide. Bright then went on to explain that he did not want an employee with depression, instability and the "mentality" to commit suicide working as a police officer. This evidence raises a clear issue of pretext.

Other evidence of pretext includes evidence that defendants have never before charged any officer with failing to remain fit and that they undisputedly selectively enforce the work place rules. Defendants claim to be concerned about their potential liability caused by Stokes' mental health, yet they readily admit that they do not monitor the health– physical or mental– of any other police officers. Defendants also readily admitted that they did not attempt to determine whether any other police officers or applicants had ever attempted suicide, acknowledging that any officer may make such an attempt. Defendants also knew Stokes would not be disqualified by APOSTC due to her attempted suicide.

Other evidence of pretext includes the fact that defendants made the decision to terminate Stokes by February 2, 2006, which is well before the expiration of the due process procedures to which Stokes was entitled. While defendants claim that Stokes was afforded the benefit of an investigation and hearing, Stokes has presented evidence that defendants had already made up their mind in early February 2006. Such evidence could well lead a reasonable fact finder to reject defendants' articulated justifications.

Finally, Stokes has demonstrated that other police officers who actually violated the same rule (duties of responsible employment) were not terminated. These employees include Officer B, Officer M, Captain W, Officer W, and

Corporal D. Stokes has presented evidence that defendants accepted Corporal B's doctors' certification of his return to duty even though the Department had documentation of his violent tendencies towards children and parents while on duty.

Defendants' case law is neither controlling nor relevant. A review of the facts of *Spades v. City of Walnut Ridge, Ark.*, 186 F.3d 897 (8th Cir. 1999) indicates that the Eighth Circuit's reasoning and holding cannot be applied to the facts of the instant case.

> Spades was employed as a police officer with the City when he attempted suicide by inflicting a gunshot wound to his head. The handgun Spades used was issued by the City. After receiving treatment for his physical injuries, and medication and counseling for his depression, Spades alleges he was capable of returning to work and performing the duties of a police officer. However, the City was advised that because it had knowledge of Spades's violent use of a firearm, his continued employment would increase the City's exposure to legal liability. As a result, Spades was terminated, giving rise to his claims that the City violated the ADA and the FMLA...

Id. at 899.

Stokes' suicide attempt was not violent. It did not involve any firearm, let alone her service weapon. Stokes does not simply allege that she was capable of returning to work. She has been certified and cleared to return to work with no restrictions by her personal doctor, the defendants' chosen doctor, and her counselor. There is no indication that Spades had or produced any such releases to his employer. Walnut City's future legal liability is explicitly related to its knowledge of the violent use of a firearm. The Eighth Circuit's discussion of the City's articulated reason also specifically points to the known violent behavior of the plaintiff. *Id*. at 900. Defendants in the instant matter can claim no such knowledge. Their fears concerning future litigation are purely based on stereotypical fears and attitudes towards people with mental disabilities.

3. Stokes' Disparate Impact Claim

In addition, Stokes has a valid disparate impact claim. Disparate-impact claims "involve employment practices that are facially neutral in their treatment of different groups but in fact fall more harshly on one group than another and cannot be justified by business necessity." *Raytheon Co. v. Hernandez,* 540 U.S. 44, 124 S. Ct. 513 (2003), *citing Teamsters v. United States*, 431 U.S. 324, 335-336, n. 15, 97 S. Ct. 1843, 52 L. Ed.2d 396 (1977). Under a disparate-impact theory of discrimination, "a facially neutral employment practice may be deemed [illegally discriminatory] without evidence of the employer's subjective intent to discriminate." *Id.* at 52-53.

The ADA defines disparate impact as "utilizing standards, criteria, or methods of administration.... that have the effect of discrimination on the basis of disability" and "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability." 42 U.S.C. §12112(a). Furthermore, the EEOC has stated that blanket exclusions of all individuals with a specific type of disability may violate the ADA since they prevent an individualized assessment of whether the disabled person can perform the job. *EEOC Technical Assistance Manual* (1992) at IV-6. Defendants claim that no person who attempts suicide will be allowed to return to work regardless of his or her actual abilities. Such a rule constitutes a selection criteria or qualification standard which tends to screen out persons with mental illness.

As acknowledged by defendants, they have the burden of proof to demonstrate that their selection criteria is job related and consistent with business necessity. See Doc 36, p. 8. Defendants have not attempted to meet this burden. Defendants' criteria is contrary to APOTC's certification standards which do not exclude police officers who have attempt suicide.

Defendants can also not meet this burden because their fears are entirely speculative and without any medical or other foundation. Indeed, defendants' blanket exclusion of all persons who have attempted suicide itself constitutes a violation of the ADA and Section 504 because it ignores the requirements regarding assessing the existence of a "direct threat." Defendants cannot impose a so-called neutral rule which violates Federal law.

4. Defendants Refused to Reasonably Accommodate Stokes.

Although defendants failed to move for summary judgment as to plaintiff's reasonable accommodation claim, plaintiff will address it briefly out of an over abundance of caution. Despite Stokes' qualifications, defendants failed to reasonably accommodate Stokes by allowing Stokes to take a short leave of absence– after which she returns to her previous position– and by refusing to allow Stokes to transfer to a lateral position.

An employer violates the ADA when it fails and/or refuses to provide an employee a reasonable accommodation which will enable the employee to work. *See* 42 U.S.C. 12112(b)(5)(A) and (B). The determination of a reasonable accommodation includes, *inter alia*, modification of work schedules and transferring an employee to a vacant position. 29 C.F.R. 1630.2(o); 29 C.F.R. App. §§ 1630.15(b), (c)

The usual Title VII machinery does **not** apply to a reasonable accommodation claim. In reasonable accommodation cases, the issues of intent or pretext are non-existent. Rather, an employer can only prevail by demonstrating that undue hardship existed. *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281, 1283 (7th Cir. 1996) (there is no need for indirect proof or burden shifting...[t]his is not a disparate treatment claim, but a reasonable accommodation claim, and it must be analyzed differently.); *Barth v. Gelb*, 2 F.3d 1180, 1186, (D.C. Cir. 1993) (the plaintiff's reasonable accommodation claim should not be analyzed under the shifting burdens of *McDonnell-Douglas*); *AKA v. Washington Hospital Center*, 156 F.3d 1284, 1300-1301 (D.C. Cir. 1998); *Baert v. Euclid Beverage, Limited*, 149 F.3d 626, n.3 (7th Cir. 1998); *White v. Boehringer Mannheim Corp.*, 28 F.Supp.2d 527, n.4 (S.D.Ind. 1998). Defendants have the burden of proof on this issue, as it is an affirmative defense.[17] *Holbrook v. City of Alpharetta, Ga.,* 112 F.3d 1522, 1526 (11th Cir. 1997) (under the ADA, the employer bears the burden to demonstrate that the accommodation would have imposed an undue hardship); *Willis v. Conopco Inc*., 108 F.3d 282 (11th Cir. 1997) (". . . undue hardship is an affirmative defense to be pled and proven by an ADA defendant.").

It is undisputed that Stokes requested a leave of absence and a transfer to a lateral position. It is also undisputed that defendants denied these accommodations. While it is true that Stokes took leave, upon her return she was demoted and terminated. Thus, defendants effectively denied this form of accommodation. Further, it is undisputed that defendants denied Stokes request to transfer.

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[17]Defendants did not raise undue hardship as an affirmative defense either in their motion or amended answer to Stokes' complaint. See Doc. 31. Defendants' Answer.

Because defendants have failed to present evidence that any of these accommodations would have caused an undue hardship, defendants' motion must be denied as to Stokes' reasonable accommodation claim. Indeed, defendants do not even make such an argument.

D. Defendants Retaliated Against Stokes.

While it appears that defendants also failed to address Stokes retaliation claim under the ADA and Section 504, out of an overabundance of caution, Stokes will address this claim.

Defendants retaliated against Stokes by failing to allow her to return to her position and by terminating her.[18] 42 U.S.C. § 12203(b) prohibits retaliation under the ADA. Section 504 also recognize a claim of retaliation. *Rothman v. Emory Univ.*, 828 F.Supp. 537 (N.D. Ill. 1993); *Treglia v. Town Manlius*, 313 F.3d 713 (2nd Cir. 2002).

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[18] Stokes does not need to have a disability in order to have a claim for retaliation, although she reasonably believed she was covered under the law. .

Stokes can easily prove a prima facie case of retaliation under the ADA.[19] She undisputedly engaged in statutorily protected activity by, *inter alia*, requesting certain reasonable accommodations and by raised her rights under the ADA during the investigation. It is also undisputed that Stokes suffered at least two adverse employment actions.

The Eleventh Circuit has repeatedly interpreted the "causal link requirement" broadly. *See Meeks*, 15 F.3d at 1021; *EEOC v. Reichhold Chem., Inc.*, 988 F.2d 1564, 1571-72 (11th Cir. 1993). In *Meeks* and *Reichhold*, the Court stated that "a plaintiff merely has to prove that the protected activity and the negative employment action are **not completely unrelated**." *Meeks*, 15 F.3d at 1021 (emphasis added); *Reichhold*, 988 F.2d at 1571-72. The Eleventh Circuit has further stated that:

> The causal link in the [retaliatory discharge] formula [is not] the sort of logical connection that would justify a prescription that the protected participation in fact prompted the adverse action. . . . Rather, we construe the "causal link" element to require merely that the plaintiff establish that the protected activity and the adverse action

[19]In order to make out a prima facie case of retaliation, a plaintiff must show (1) statutorily protected expression; (2) adverse employment action; and (3) a causal link between the protected expression and the adverse action. *Griffin v. GTE Florida, Inc.*, 182 F.3d 1279 (11th Cir. 1999) *citing Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997). A plaintiff's burden at this prima facie stage is *de minimis*. *Treglia v. Town of Manlius*, 313 F.3d 713 (2d. Cir. 2002); *see Richardson v. New York State Dept. of Correctional Serv.*, 180 F.3d 426, 444 (2d Cir. 1999).

> were not wholly unrelated. At a minimum, a plaintiff must generally establish that the employer was actually aware of the protected expression at the time it took the adverse employment action. (internal cites omitted).

Hairston, 9 F.3d at 920.

The causal link requirement can be established merely by temporal proximity to the adverse action. *Farley v. Nationwide Mutual Ins. Co.*, 197 F.3D 1322, 1336 (11th Cir. 1999). The Eleventh Circuit has held that "[e]vidence that the adverse treatment followed closely upon the protected activity . . . may be sufficient to establish a causal connection." *Eastland v. Tennessee Valley Authority*, 704 F.2d 613, 627 (11th Cir. 1983)(holding that a causal link may be established upon a showing that only a short period of time passes between the protected activity and the adverse personnel action complained of); *see also Goldsmith v. City of Atmore*, 996 F.2d 1155, 1163-64 (11th Cir. 1993); *Donnellon v. Fruehaup Corp.*, 794 F.2d 598, 601 (11th Cir. 1986); *Jordan v. Wilson*, 649 F. Supp. 1038, 1061 (M.D. Ala. 1986).

Stokes has presented evidence of a causal connection between her protected activity and the adverse actions. First, the timing of the events demonstrates a reasonable inference of causation. Stokes requested the leave on or about December 19, 2005. Defendants refused to allow her to return to work one month later and by February 2, 2006, they had decided to terminate her. Such constitutes evidence of retaliation. *Treglia v. Town of Manlius*, 313 F.3d 713 (2d. Cir. 2002); *see Quinn v. Green Tree Credit Corp.*, 159 F.3d 759, 769 (2d. Cir. 1998) (two months between protected activity and allegedly adverse action sufficient to establish causation). Second, Stokes has presented evidence that defendants terminated her due to her need for the leave.

Since defendants have not addressed Stokes' retaliation claim under the ADA or Section 504, they have no advanced any legitimate, nondiscriminatory reason for refusing to allow Stokes to work or for terminating her. However, assuming that defendants rationale is identical to what they put forth relative to her discrimination claims, Stokes has presented evidence of pretext, consistent with the evidence which demonstrates pretext concerning her discrimination claim.

Accordingly, this Court should deny defendants' motion for summary judgment as to Stokes disability claims.

V. DEFENDANTS VIOLATED STOKES' RIGHTS UNDER TITLE VII.

Defendants are also not entitled to summary judgment as to Stokes' Title VII claims for gender discrimination and retaliation. Stokes has demonstrated a *prima facie* case of gender discrimination and she has present evidence which raises a reasonable inference of pretext, including evidence that several males have broken work place rules but have not been terminated.

A. Stokes Has Presented A Prima Facie Case of Gender Discrimination.

A prima facie case of disparate treatment is established when the plaintiff demonstrates that she was "a qualified member of a protected class and was subjected to an adverse employment action in contrast with similarly situated employees outside the protected class." *McCalister v. Hillsborough County Sheriff*, 211 Fed. Appx. 883, 885 (11th Cir. 2006)(internal citations omitted). The *McDonnell Douglas* framework was never meant to be "rigid or inflexible" and is not required in cases that do not "neatly fit into the classic *prima facie* case formula." *Schoenfield v. Babbitt*, 168 F.3d 1257, 1268 (11th Cir. 1999), citing *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1525 (11th Cir. 1991). *Schoenfield*, 168 F.3d at 1268 (citing *Hill v. M.A.R.T.A.*, 841 F.2d 1533, 1540, *Furnco Constr. Corp. v. Waters*, 438 U.S. 567 (1978)); *Nix v. WLCY Radio/Rahall Communication*, 738 F.2d 1181 (11th Cir. 1984); *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983). Rather, "(t)he methods of presenting a prima facie case are not fixed; they are flexible and depend to a large degree upon the employment situation." *Wilson v. B/E Aerospace, Inc.*, 376 F.3d

1079, 1087 (11th Cir. 2004).

Alternatively, "(i)n cases involving alleged... bias in the application of discipline for violation of work rules, the plaintiff," who must be a member of a protected class, must demonstrate "(a) that [she] did not violate the work rule, or (b) that [she] engaged in misconduct similar to that of a person outside the protected class, and that the disciplinary measures enforced against [her] were more severe than those enforced against the other persons who engaged in similar misconduct." *Jones v. Gerwens*, 874 F.2d 1534, 1540 (11th Cir.1989). Further, "(i)n evaluating the similarity of the comparators identified by the plaintiff, the most important variables in a discriminatory discipline case are the nature of the offenses and the nature of the punishments imposed." *Smith v. Montgomery*, 2007 WL 1266867, fn.6 (M.D. Ala. 2007).

Defendants incorrectly assert that Stokes cannot demonstrate a *prima facie* case. Defendants do not dispute that Stokes has met the first three elements of her prima facie case. However, defendants claim that Stokes cannot show that there were males who were accused of similar conduct who received dissimilar discipline. This assertion both ignores Stokes assertion that her suicide attempt violated no rule and that even if it did, males who engaged in more serious behavior have been disciplined far less severely.

At the onset, Stokes reiterates that she did not violate any rule. Rather as a result of her depression, she attempted suicide. Defendants cannot avoid complying with the applicable Federal laws by recasting Stokes' disability and/or serious health condition as a rule violation. This is especially true given that Stokes' attempt was made while "off the clock".

Additionally, Stokes has presented evidence that defendants' enforcement of the rule is selective and subjected. The rules that Stokes allegedly violated are not clearly defined and defendants acknowledge that the application of those rules is subjective. Likewise, it is undisputed that Stokes is the only employee ever charged with failing to remain fit and that defendants do not even attempt to monitor the physical or mental health of other employees to make sure that they remain "fit" or are responsible employees. Thus, while Stokes is held to a high standard relative to her fitness for duty, other male employees are not.

In *Anderson v. WBMG-42*, 253 F.3d 561, 564-565 (11th Cir. 2001), the Eleventh Circuit found sufficient evidence of discrimination in a similar situation. Anderson, an African American female, was terminated for engaging in "unprofessional conduct." The subjectiveness of the rules, however, gave an inference of discrimination. As explained by the Eleventh Circuit.

.When the record establishes that no objective criteria was applied in an employer's decisionmaking process, such as the case here, similarly situated evidence is particularly relevant because inferences of discriminatory motive depend upon the application of subjective criteria.FN1

FN1. The Supreme Court has consistently recognized that disparate treatment potentially results from an employer's practice of committing employment decisions to the subjective discretion of its supervisors. See *Watson v. Ft. Worth Bank & Trust,* 487 U.S. 977, 988, 108 S.Ct. 2777, 101 L.Ed.2d 827 (1988)("[W]e have consistently used conventional disparate treatment theory, in which proof of intent to discriminate is required, to review [employment] decision[s] that were based on the exercise of personal judgment or the application of inherently subjective criteria.") (citing *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978) (hiring decisions based on personal knowledge of candidates and recommendations); *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981) (discretionary decision to fire individual who was said not to get along with co-workers); *U.S. Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983) (discretionary promotion decision)).

This is especially so when the reason given for the disciplinary action is "unprofessional behavior," which can encompass a wide range of actions.FN2

FN2. The Supreme Court has observed that "precise equivalence in culpability between employees is not the ultimate question[,]" and, therefore, has directed the emphasis of the fact finder's inquiry to the question of "comparable seriousness." *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, 283 n. 11, 96 S.Ct. 2574, 49 L.Ed.2d 493 (1976) (Evidence of comparator employees involved in acts of "comparable seriousness [as the plaintiff] ... is adequate to plead an inferential case that the employer's reliance on his discharged employee's misconduct as grounds for terminating him was merely a pretext.") (internal quotations and citation omitted). *Anderson v. WBMG-42*, 253 F.3d 561, 564-565 (11th Cir. 2001).

As was true in *Anderson*, the conduct prohibited by the rules on duty to remain fit and duties of responsible employment is subjective and defendants acknowledge that they use subjective judgment in determining whether an employee violated a rule.[20]

2. Stokes has Demonstrated Pretext.

Given that Plaintiff had established a *prima facie* case, Defendants must articulate a legitimate reason for Stokes' termination. However, defendants have failed to meet its burden. As explained, defendants rationale amounts to discrimination against Stokes based on her disability.

Even if defendants have articulated a legitimate reason, summary judgment must still be denied. Stokes' evidence regarding her comparators and her evidence disputing the alleged misconduct demonstrate pretext. On summary judgment, the Eleventh Circuit recognizes "that the 'work rule' defense is arguably pretextual when a plaintiff submits evidence (1) that she did not violate the cited work rule,

[20]Further, there are many male officers who engaged in far more serious conduct which resulted in a charge of violating the Duties of Responsible Employment. These officers include Officer B, Officer M, Captain W, Officer W, and Corporal D. However, defendants did not terminate any of the male officers. At most, the officers were suspended. Finally, Stokes was the only officer from 2003 to 2007 to be charged with violating the Duty to Remain Fit.

or (2) that if she violated the rule, other employees outside the protected class, who engaged in similar acts, were not similarly treated." *Damon,* 196 F.3d at 1363. "(T)he phrase 'similarly situated' is the correct term of art in employment discrimination law" to use when comparing the defendant's handling of an act of a party who falls within the protected class to a party outside that class. *Alexander v. Fulton County, Georgia* 207 F.3d 1303, 1333 (11th Cir. 2000).

Here, pretext is demonstrated by the fact that other males who have been charged with violating the rule duties of responsible employment who have engaged in far more serious behavior, but have not been terminated. For example, Officer B. was videotaped punching a prisoner in the back of a patrol car, but was only suspended for 15 days and required to attend anger management classes before being allowed to return to his position in the patrol division. Officer M. not only tested positive for cocaine, but lied about how he came in contact with the drug. Officer M. was only suspended for 45 days. In addition to emailing porn through his work email, Captain W. bought a weapon from a criminal who had been charged with smuggling weapons and also discussed police business with the same criminal. Captain W. was only suspended for 30 days. Officer W. was videotaped publically humiliating a suspect and received only a 35 day suspension. Corporal D. punched a prisoner in the face after that prisoner had already been handcuffed and subdued. Corporal D. was suspended for 30 days and required to attend anger management classes.

Other evidence which demonstrates pretext is the same evidence discussed concerning Stokes ADA/Section 504 claims. Defendants' assertion that Stokes constitutes a safety threat is disputed by the medical evidence that Stokes was capable of returning to her position without restrictions. Thus, the truth of defendants' rationale is at issue.

Stokes also presented evidence that defendants made the decision to terminate Stokes not after the completion of the investigation and hearing process as alleged by defendants, but well before the completion of that process. This evidence further undercuts the accuracy of defendants' proffered rationale. Thus, Stokes is entitled to have her claims heard by a jury because the reasons given for plaintiff's termination are unworthy of credence. *Ashe v. Aronov Homes* 354 F.Supp.2d at 1261. ("The inconsistencies in the evidence and the timing of these negative performance memoranda could lead a reasonable fact finder to conclude that Defendant's proffered reasons for terminating Plaintiff are false or, at least, should not be believed."); *Reeves*, 530 U.S. at 147 (citing *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 517 (1993)). *Ozark Interiors, Inc. v. Local 978 Carpenters,* 957 F.2d 566, 569 (8th Cir. 1991).

Viewing all of this evidence in the light most favorable to Stokes, a reasonable inference exists that defendants discriminated against Stokes based on her gender. Evidence which demonstrates "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons . . . that a reasonable fact-finder could find them unworthy of credence. . . (means that) (t)he trier of fact may infer the ultimate fact of discrimination from the falsity of the employer's explanation." *Hamilton v. Montgomery County Bd. Of Educ*. 122 F.Supp. 2d 1273, 1281 (M.D. Ala. 2000) (citations omitted). As the Supreme Court held:

> In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the fact-finder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." . . . Moreover, once the employer's justifications has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision.

VI. DEFENDANTS VIOLATED STOKES' RIGHTS UNDER THE FAMILY MEDICAL LEAVE ACT (FMLA)

Stokes has filed a motion for summary judgment regarding her claim that Defendants interfered with her rights under the FMLA. That claim is pending before this Court. Stokes herein reiterates the law and arguments contained in her motion. Since, defendants' motion seeks only to dismiss Stokes' FMLA claim for retaliation, Stokes will address the law surrounding the FMLA only as it relates to retaliation.

The parties do not dispute that Stokes had a "serious health condition" Under the FMLA, an eligible employee who has a "serious health condition which entitled her to FMLA leave. *Curry v. Neumann* 2000 WL 1763842 (S.D. Fla. 2000). It is also undisputed that Stokes took approved FMLA leave from December 19, 2005 until January 20, 2006, when she was released to work without restrictions. An eligible employee who takes leave under the FMLA is entitled to be restored to the same or an equivalent position upon returning from leave.[21] An employee must only provide his employer with a simple statement from his health care provider indicating that the employee is able to return to work. *Underhill v. Willamina Lumber Co.*, 1999 WL 421596, *7 (D. Or. 1999). It is undisputed that Defendants refused to allow Stokes to return ot her position and that they terminated her.

Courts have recognized two theories for recovery on FMLA claims under § 2615, the retaliation or discrimination theory and the entitlement or interference

[21] *Tardie v. Rehabilitation Hosp. of Rhode Island*, 168 F.3d 538, 543 (1st Cir. 1999); *see* 29 U.S.C. § 2614(a)(1); *Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 159 (1st Cir. 1998)(*citing* 29 U.S.C. § 2614(a)(1) and 29 C.F.R. § 825.100(c)).

theory. The retaliation or discrimination theory arises from § 2615(a)(2), which provides that "[i]t shall be unlawful for any employer to discharge or in any manner discriminate against any individual for opposing any practice made unlawful by this subchapter."[22]

Contrary to their assertion, Defendants violated Stokes' rights under the FMLA by retaliating against her. Defendants refusal to return her to her job, the placement of Stokes on the back desk and the termination of Stokes, all preclude summary judgment on this claim. Further, the evidence which gives rise to an issue of pretext discussed above supports Stokes' claim of retaliation.

In order to state a prima facie case of retaliation under the FMLA, a plaintiff must allege that (1) he engaged in a protected activity, (2) he suffered an adverse employment decision, and (3) the adverse decision was causally related to the protected activity. *Strickland*, 239 F.3d at 1207. This can be shown through either direct or indirect evidence, the latter of which requires applying the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

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[22] The plaintiff's prima facie case of a violation of retaliation under the FMLA 29 U.S.C. § 2615(a) consists of a showing that (1) he availed himself of a protected right under the FMLA; (2) he was adversely affected by the employment decision; and (3) there is a causal connection between the two actions. *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1325 (10th Cir. 1997).

Defendants do not dispute that Stokes has established the first two elements of her prima facie case. Stokes engaged in a protected activity by requesting and using FMLA-protected leave. Additionally, she engaged in a protected activity when she complained about defendants' handling of her return to work after her FMLA leave. It is also undisputed that defendants terminated Stokes and that they refused to reinstate Stokes to her former position or an equivalent position.

The close temporal proximity of the adverse employment actions combined with defendants' knowledge of Stokes' protected activities establish the third element of Stokes' prima facie case. Stokes leave began on December 19, 2005. On January 13, 2006 Stokes' attempted to return to work following her FMLA leave. Defendants refused to allow her to return to work and then placed her on the back desk. By February 1, 2006, when she underwent an investigation for a possible rule violation, Stokes had protested defendants' failure to reinstate her. While defendants claim that Bright decided to terminate Stokes on May 9, 2006, Stokes has presented evidence that defendants actually decided to terminate her on or about February 3, 2006. Thus, the timing of these events demonstrates a *prima facie* case of retaliation. *Brungart v. BellSouth Telecomms., Inc.*, 231 F.3d 791, 799 (11th Cir. 2000)("The general rule is that close temporal proximity between the employee's protected conduct and the adverse employment action is sufficient circumstantial evidence to create a genuine issue of material fact of a causal connection").

In addition, defendants admit that the reason that they took adverse action against Stokes was due to her suicide attempt. However, it is undisputed that the her suicide attempt was the reason Stokes needed FMLA leave. It would make little sense for Congress to enact a law which entitles a person to leave for having a serious health condition, while simultaneously allowing an employer to terminate the employee for having the condition.

Defendants argue that Mayor Bright was the sole decision maker and that he did not know that Stokes had taken FMLA leave before a ratifying the recommendation to fire her. However, the evidence before this Court disputes defendants' assertion. Stokes has presented evidence that irrespective of whether Bright ratified or finalized a decision in May, 2006, it had already been decided that Stokes would be terminated in February 2006, when Carnell contacted Stokes' counselor to apprise her of the City's decision. Further, Baylor admits that after the Board hearing in February 2006, that he recommended Stokes' termination to Bright. There can be no dispute that both Baylor and Murphy were well aware of Stokes' FMLA leave as, *inter alia*, the leave was approved by Baylor. Bright approved the placement of Stokes on Administrative leave, pending a psychological. Pl. Exh. 6. These inconsistencies refute defendants' argument regarding Bright's knowledge. Further, it is undisputed that Murphy and Baylor, who did have knowledge, were in a position to influence Bright.

Defendants attempt to argue that their fears concerning exposure to future litigation are a legitimate, non-discriminatory reason for firing Stokes. As described above, Stokes has presented evidence that defendants' rationale are not only discriminatory as a matter of law and but also a pretext for retaliation. Defendants' justifications for not returning Stokes to her job are based on stereotypes and in contradiction with Stokes' doctors' opinions. Given Stokes' evidence disputing defendants' rationale for not allowing her to return to work, a genuine issue material fact exists that defendants' proffered reason is a pretext for retaliation. In the context of an FMLA claim, a plaintiff can establish a pretext by pointing to "evidence, including the previously produced evidence establishing the prima facie case, sufficient to permit a reasonable fact finder to conclude that the reasons given by the employer were not the real reasons for the adverse employment decision." *Hurlbert* at 1298.

Defendants again cite to *Spades v. City of Walnut Ridge, Ark*., 186 F.3d 897 (8th Cir. 1999). As described above, the facts of the plaintiff's suicide attempt and the City's position on liability as it relates to certain knowledge of violent use of a firearm distinguish Spades from the instant matter. Further, there are no facts in the decision concerning the plaintiff's request or use of FMLA leave. The Eighth Circuit's analysis of Spades' FMLA claim is limited to the final sentences quoted by defendants. As will be explained below, each claim deserves separate, thorough analysis under the standards specific to the law invoked.

Again, particularly relevant to this action is *Chandler v. Specialty Tires of America*, 283 F.3d 818 (6th Cir. 2002) (*Chandler I*). Plaintiff in this matter attempted to commit suicide by taking an overdose of pills. She subsequently requested and took FMLA leave. After discovering the fact of the suicide attempt, her employer decided to terminate her employment. Chandler brought an action against Specialty Tires alleging that it had violated her rights under the Tennessee Handicapped Act and the Family Medical Leave Act by wrongfully terminating her. A jury found for Chandler on her FMLA claim. Specialty appealed that verdict. Affirming the jury verdict and award of liquidated damages, the Sixth Circuit reasoned:

> Specialty argues that Chandler has provided no evidence that she was discharged for exercising her rights under the FMLA. According to Defendant, Beck never considered the cause of Chandler's suicide attempt or the fact that it might result in an absence from work; instead he considered "only the act of overdosing, itself." Def.'s Brief at 26. Because the act of intentionally overdosing on drugs is not protected activity under the FMLA, Defendant argues the jury had no legal basis to support the

verdict.

Chandler counters that this distinction between the act of overdosing and the underlying medical treatment for depression is a false one. She notes that Specialty acknowledged that she requested medical leave while hospitalized on May 18, 1998. She was on leave for one week and she was not offered her position or a similar one upon her return; instead, she was fired.

In analyzing this case, it is important to note what this case is not. This is not an action arising under the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). Neither does this portion of the case address the merits of Plaintiff's THA claim. The FMLA protects an employee from adverse action as a result of his taking leave for a serious medical condition. It does not protect an employee from adverse action motivated by the underlying medical condition itself. Although the factual scenarios that give rise to an FMLA or ADA cause of action may often coincide, the legal entitlements that flow from these facts will differ. *Cf. Navarro v. Pfizer Corp.*, 261 F.3d 90, 101 (1st Cir.2001) (noting that "[t]he ADA and the FMLA have divergent aims, operate in different ways, and offer disparate relief").

It is apparent that hospitalization for severe depression is covered by the statute. See 29 U.S.C. § 2611(11)(A). Moreover, Specialty stipulated that Plaintiff was entitled to take leave. Defendant only argues that "an employer is free to terminate an employee while on FMLA leave so long as the termination is not because the employee exercised her rights under the FMLA." Def.'s Brief at 27. The central question is whether the jury could have reasonably found that Beck fired Chandler for taking leave rather than for ingesting an overdose of drugs, or even for having been diagnosed with depression.

We find that there was sufficient evidence to support the jury verdict. We are mindful that the trial court is always better able to judge witness credibility than is the appellate court. Beck insists that he took no account

> of whether Chandler was on leave in his decision to terminate her. The jury did not believe him. There was no special verdict, so we cannot determine what specific facts the jury found compelling. However, these facts were known to the jury: Beck knew that Chandler was on medical leave. He knew that she had been hospitalized for a suicide attempt. He decided to terminate her employment shortly after finding out she was hospitalized. The timing of her termination coincided with the end of her period of leave. He did not think that she was qualified for leave under the FMLA. In addition, Beck admitted that, prior to her termination, Chandler had been an excellent employee; her periodic reviews, admitted into evidence, were exemplary.

Chandler I at 825-826. Similar to Chandler, Stokes was hospitalized for her suicide attempt. Additionally, the relevant decision makers (here Murphy, Baylor, and Bright) knew of the hospitalization. There is a disputed issue of fact as to whether Murphy, Baylor and Bright all knew that Stokes was on medical leave. Just as in Chandler, the relevant authority figures each made his decision with regard to the various adverse employment actions shortly after finding out about the hospitalization. There appears to be no dispute that Stokes was an excellent employee prior to her termination. Accordingly, defendants' motion for summary judgment on Stokes' FMLA retaliation claim must be denied.

VII. CONCLUSION

Based on the foregoing, Defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,

s/ Deborah A. Mattison
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CERTIFICATE OF SERVICE

I do hereby certify that on August 26, 2008, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael D. Boyle

s:/ Deborah A. Mattison
Of Counsel

EXHIBIT 16

Candy Stokes

1/18/06

Met Candy for the first time after her release from Meadhaven. She had been referred to me by Cathy Jones after her retirement and Candy's suicide attempt. Candy discussed her boyfriend, getting her job back, her daughter and the program at Meadhaven. We discussed getting a release for her from another psychiatrist as requested by John Carnel. Candy was upbeat and calm.

1/26/06

Candy smiled and sounded positive throughtout the session. She discussed finding a codependent meeting in town for support. She discussed the situation with her boyfriend and the support she was receiving from the department.

2/2/06

Candy came in distraught and crying. She was being brought up on charges and felt she would lose her job. We discussed the charges and what it would mean if she lost her job. She assured me she would not hurt herself because she needed to be there for her daughter. We planned out her evening with her daughter and made plans to meet the next morning.

2/3/06

I talked to John Carnell and questioned him about her job. He stated she was going to lose her job. I told him I did not know how she would respond to the loss of her job. He stated he would talk to the attorneys and get back with me about procedures and time frames. He later called back and stated that someone would contact her and tell her she was on order to contact us and do whatever we told her to do. I called John Carnell at 3:30 after hearing nothing from Candy. He called a unit to her home to tell her to contact us because no one could get her at home. Major Murphy called me on the way to her house and asked for my numbers.

Candy came in and I told her she would be losing her job. She wept. She assured me she would be okay and that she was not going to hurt herself.

EXHIBIT 17

POLICE OFFICER

8210
10/27/00

NATURE OF WORK: The fundamental reason this position exists is to provide protection and security for the citizens of Montgomery. Police officers serve as entry-level sworn personnel in one of nine MPD divisions. Incumbents provide protection through daily patrol, traffic, investigation, and communication efforts. Work also entails responding to emergency incidents, participating in narcotics undercover operations, and securing crime scenes. Incumbents document in writing events and procedures of an important nature and may present that information in a court of law. Police officers are typically supervised by Sergeants and must respond and report through the chain of command.

WORK BEHAVIORS AND TASKS: ***The following list was developed through a job analysis, however, it is not exhaustive and other duties may be required.***

***ESSENTIAL FUNCTION: Provides police patrol and traffic related services using police vehicles, radios, flashlights, emergency equipment, stolen vehicle "hot sheets" or lookouts, street locators, street uniform, and spotlights following the patrol procedures outline in order to maintain high law enforcement visibility, detect criminal activity, ensure unit is available to respond quickly to service calls, ensure information concerning activities occurring in area of responsibility is communicated to supervisor and other officers of other specialized units.**

Operates patrol vehicle during normal and adverse weather conditions while performing patrol duties.

Identifies unusual roadway or traffic conditions, unusual conditions of structures, damaged utilities, and hazardous abandoned property (e.g., refrigerators, wells, explosives, identify potentially dangerous or hazardous situations).

Requests dispatcher to contact appropriate division/department or agency for removal of hazardous conditions to protect people and property or suspicious individuals out of place in the area.

Inspects motorist's disabled vehicle to determine the problem and whether it may be fixed at the scene or whether towing service is required.

Pushes (physically) motorist's disabled vehicle to safe location to clear roadways and prevent further accidents.

Advises dispatcher to arrange for towing services to remove vehicle from roadway.

Inspects (visually and/or physically) doors and windows of business establishments and private dwellings for signs of damage or illegal entry.

Communicates information over the radio while driving a patrol vehicle, to receive or give instructions or broadcast general information.

Drives and/or walks through communities and through buildings or stands at strategic locations to maintain the peace and order.

Confronts numerically large groups of agitated people to change their behavior, control their movement and to prevent the spread of disturbance and the destruction of property and injury.

Sets-up traffic patterns at accident scenes, construction sites, major sports and recreational events, and catastrophes to help alleviate congestion and facilitate traffic flow.

Regulates the flow of traffic using hand signals, flashlights, and flares.

Observes demonstrators, strikers, and celebrants to provide security for people and property.

Regulates the movement of people to keep pedestrian walkways and fire lanes open.

Observes vehicle operators for behavioral signs of DUI and other violations.

Observes for suspicious driver behavior to identify possible stolen vehicles.

Records descriptions and tag number of stolen cars to be aware of vehicles to watch for on patrol.

Establishes rapport with individuals in areas of responsibility to keep abreast of activities occurring in the area.

Searches for stolen vehicles by observing roadway or by monitoring target areas to apprehend suspect and recover the vehicle.

On patrol, looks for stolen vehicles by observing, recording, and remembering characteristics of vehicles in the flow of traffic.

Drives by schools and convenience stores to ensure they are operating normally and maintain a high level of visibility.

Drives by "hang-out" spots or local night spots or parking lots or targeted high crime areas to maintain a high level of visibility.

Reports failing traffic light to the dispatcher.

Observes for individuals demonstrating suspicious behavior, juveniles who should be in school.

ESSENTIAL FUNCTION: Secures crime scenes such as homicides, robberies, burglaries, traffic, shootings, rapes, and suicides using paper bags, crime scene log, fingerprint kit, gloves, camera, video machine, lights and generators, radios, diagrams and sketches, glass slides, viles, paint, measuring tape, crime scene tape following uniform patrol procedures manual in order to identify potential suspects and witnesses, identify the elements of crime.

Secures the crime scene upon arrival (if it has not been done already by other law enforcement agencies) by keeping unauthorized individuals out and requesting individuals on the scene who should be there to preserve evidence.

Completes a crime log listing the names of all individuals at the crime scene.

Provides assistance/first aid to injured victims at crime scene.

Photographs crime scene to preserve the crime scene as it was discovered and provide permanent record of the scene for future evidence.

Draws diagram of crime scene to provide a visual record of the scene for use as future evidence.

Calls radio dispatcher to give identifying information about a suspect for the purpose of issuing an all points bulletin to assist in apprehension of possible suspect.

Separates witnesses and suspect to prevent their collaboration on the fact surrounding the incident.

Takes field notes documenting what occurred before, during and after the crime, who was present at the time, and who is present during the investigation following the crime (e.g., coroner, forensics, family members of victims, other law enforcement agents) for use as future evidence.

Transports witnesses or suspect to police headquarters.

Identifies victim by getting family members or witnesses to verify his or her identity to proceed with the investigation.

Evaluates and inspects crime scene to locate the points that a criminal entered and exited.

Develops a list of potential suspects based on evidence.

ESSENTIAL FUNCTION: Investigates criminal cases such as homicide, robberies, burglaries, traffic, shootings, rapes and suicides using case files, tape recorders, cameras, photos of mug books, criminal history files, computers, school yearbooks or annuals following the State of Alabama Criminal Code (Title 13), (Title 32) in order to identify the person who perpetrated the crime, identify motives for criminal actions, prepare for submission to DAs office, identify criminal patterns.

Develops a strategy for continuing criminal investigations.

Shows victim(s) photographs of known criminal offenders following legal requirements.

Synthesizes (e.g., catalogues, organizes) facts gathered during criminal investigation to draw conclusions of motive and identification of suspect and clearance of case.

Selects individuals to participate in a "lineup" while ensuring that all legal requirements are met.

Adjusts daily case investigation plans (e.g., suspend work on a case) to investigate a major crime (e.g., rape, murder).

Decides what law may have been broken based on evaluation of physical evidence and information to choose a direction for investigation of the crime.

Evaluates physical evidence to make a judgement about what is the best evidence to use to pursue further investigation and that will result in a prosecutable case.

ESSENTIAL FUNCTION: Collects, maintains and evaluates evidence collected from crime scene investigations using scales, bags, field test kits, fingerprint kits, cameras, gloves, tape recorders, tape measures, seals and tags, lights and generators, video cameras in order to prevent contamination or tampering with evidence, preserve evidence, identify potential suspects and witnesses, identify the elements of crime.

Tests controlled substances during evidence gathering operations or arrest to determine whether substances confiscated are illegal.

Isolates (e.g., bags, seals, and tags) crime scene evidence from contamination and to prevent tampering with evidence.

Explains investigative procedures to others at the scene to ensure the protection of evidence.

Identifies blood type, drugs or other physical evidence using the crime laboratory.

Evaluates crime scene (i.e., visually inspects to determine equipment necessary for processing crime scene (e.g., fingerprint kit, camera).

Photographs law enforcement related incidents such as accident scenes, evidence and crime scenes, and accidental death scenes.

Lifts latent fingerprints for identifying perpetrators.

Marks and catalogues evidence to maintain chain-of-custody and prevent tampering of evidence during transmittal to other agencies or areas for storage.

Discusses physical evidence and the result of laboratory analysis with laboratory technicians and medical examiners.

Researches firearms (i.e., runs serial numbers, request analysis by forensics) used at crime scenes or recovered from vehicles to verify use and background of weapon.

Maintains an evidence log to document the receipt and location of all physical evidence associated with a case.

Monitors the evidence room to ensure the maintenance and documented movement of evidence into and out of the evidence room.

Collects evidence (e.g., dust for fingerprints, gather all weapons and dead bodies) and tags it for identification purposes.

ESSENTIAL FUNCTION: Interviews witnesses and suspects using tape recorders, video cameras, field notes, Miranda forms (adult and juveniles), witness locator forms in order to gather additional information and facts surrounding an incident.

Locates witnesses and suspects and questions each as to the who, why, where, how, and what of the crime to gather evidence that can eliminate suspects and prove who committed the crime.

Reads interview statements with witnesses to separate fact from fiction and determine exactly what transpired at the scene.

Identifies witnesses to establish their true identity for future reference, including court appearances, and subpoenas.

Advises suspects and witnesses of constitutional Miranda rights to comply with Supreme Court mandates.

Establishes rapport with witnesses, suspects, and victims to gain their confidence and trust so that they will provide truthful information.

Records or writes interview statements to preserve record of communication.

Interviews and/or interrogates juveniles, victims, witnesses, and suspects about involvement in enforcement situations.

Interviews complainants, victims and witnesses involved in criminal cases to obtain statements or other information related to case.

Questions and interrogates criminal suspects to establish additional facts or obtain confessions.

ESSENTIAL FUNCTION: Responds to life-threatening or disaster-level emergencies such as victim injuries, fires, tornadoes and bomb threats using fire extinguishers, radios, police vehicles, traffic vests, emergency equipment, flashlights, barricades following Uniform Patrol Procedures Manual, Disaster Call-out Sheet, Hazardous Material Manual in order to ensure the safety of, property, self and others during dangerous or hazardous situations, minimize injuries to self and others during dangerous situations. Stabilize injured individuals until medical assistance arrives.

Extinguishes small fires such as grass or vehicles to prevent or minimize damage and prevent injury.

Rescues people from dangerous situations such as burning buildings, vehicles, and drowning.

Administers first-aid such as treat for shock, stop bleeding to injured at emergency scenes until medical assistance arrives.

Evaluates an emergency or disaster scene to determine what assistance is required, whether evacuation is necessary and whether ordinance disposal unit is necessary or additional medical assistance is needed.

Evacuates occupants of buildings and surrounding areas during emergencies or disasters.

Maintains security of an emergency area and controls gathering crowds.

Searches buildings and/or areas for bombs, indications of other criminal activity.

Provides on-the-scene counseling to assist persons in dangerous situations, during emergencies, and to reassure injured individuals that medical assistance is on the way.

Determines if backup is necessary, and if so requests backup assistance.

Establishes a perimeter and if necessary diverts traffic and bystanders.

ESSENTIAL FUNCTION: Responds to calls requiring search, seizure or arrests using handcuffs, search warrants, batons, flashlights, police vehicles, weapons, tear gas, emergency equipment, restraint straps, radios, miranda cards, evidence bags, plastic gloves following Arrest, Search and Seizure, and Transportation Manual, Uniform Patrol Procedures Manuals in order to gather evidence, seize property, to ensure suspects are lawfully placed in custody.

Gathers information on proper procedures for physically subduing those who resist, to ensure proper procedures are used.

Talks to people who exhibit harmful or destructive behavior, employing counseling techniques to convince the person to give up inappropriate behavior.

Assists mentally ill persons in obtaining professional assistance.

Secures and records fingerprints following an arrest.

Searches for wanted persons and vehicles.

Requests backup assistance when necessary.

Observes criminal and/or dangerous behavior, contraband, and instruments of crime to determine whether sufficient elements of an offense exist to arrest.

Takes individuals into custody (physically arrests individual).

Communicates orally with others (e.g., patrol units, youth officers, social services, emergency medical services) to arrange for the safe and secure transportation of individuals.

Stops suspects in a safe place, using a patrol vehicle, such that a suspect can be safely approached.

Chases (e.g., runs, jumps, crawls, climbs) suspect on foot.

Discharges weapon as a last resort to protect self or others.

Searches the body and clothing of persons in custody to locate and remove weapons that can be used to escape or to harm self or others.

Determines whether motor vehicles can be searched without a warrant, pursuant to appropriate exceptions, or whether a valid search warrant is necessary.

Serves warrants (i.e., advises suspect of his/her legal rights, and takes possession of property specified in orders of court).

Impounds vehicles and notifies owner.

Searches crime scene area to determine whether subject is in area.

Communicates orally to individuals at a crime scene to coordinate the activities of individuals and obtain cooperation of victims, witnesses, and bystanders.

Coordinates/runs metal detectors as specified.

Reads search warrants to people in control of property to explain the proper authority of police and charges against the accused.

Advises accused of rights, before questioning, when making an arrest.

Searches areas set forth in warrants.

Inventories confiscated and found property obtained while serving warrant.

Receives, signs and execute warrants from the warrant clerk to lawfully effect arrest and/or conclude search.

ESSENTIAL FUNCTION: Responds to calls for service such as disturbance calls, domestic violence disputes, juvenile offenses and missing persons calls using police vehicles, weapons, handcuffs, batons, flashlights, radios, emergency equipment, telephones following Uniform Patrol Procedures Manual in order to diffuse the disturbance situation, negotiate a resolution to the disagreement or dispute, advise individuals of available protective services and their rights.

Separates individuals during disturbances and evaluates circumstances to prevent injury to involved parties.

Explains procedures for obtaining protection and the consequences of abusive behavior to others when responding to disturbances.

Requests youth services for the protection of children involved in disturbances.

Communicates orally with people having knowledge of circumstances surrounding the disappearance of a "missing person" to determine actions necessary if person is actually missing or just left.

Identifies missing persons' most likely rural and urban locations.

Talks to juveniles, in non-enforcement situations, instructs them in proper and socially acceptable behavior, and explains rewards and punishments associated with various behavior.

Notifies Child and Protective Intake personnel when taking juveniles involved in abuse and neglect into custody for their own protection or notify parent/guardian.

Takes juveniles into custody at the request of the child abuse agency and holds until DHR finds appropriate placement.

Transports runaways or juveniles back home.

ESSENTIAL FUNCTION: Prepares for and testifies in court using case files, chain of custody, evidence, field notes following Court Procedures Manual in order to present the facts surrounding the case in a court of law.

Reviews investigative reports in preparation for court testimony.

Discusses investigations with supervisors, prosecutors, and defense counsel to prepare for court testimony.

Discusses the Rules of Criminal Procedures and the Rules of Evidence with district attorney's staff to prepare for court testimony.

Answers questions presented by judge or attorney and describes facts relating to case when testifying in court.

Maintains a professional demeanor in court by being impartial to maintain credibility and responsibility in establishing the truth from the fact of the evidence.

Keeps track of dates to appear in court to ensure accessibility.

ESSENTIAL FUNCTION: Prepares and completes written documentation of work assignments such as Incident Offense Reports, Ticket Books, Arrest Warrants, affidavits, Youth Slips, Field Interview Cards, Impound Reports, Accident Reports using black ink pens, typewriters, templates, correction fluid, computers, transmittal sheets following the Report Writing Manual, Uniform Alabama Traffic Accident Book, State of Alabama Title 13 and Title 32 in order to secure warrants to effect arrests, document actions taken when handling incidents or offenses, record lost or stolen property, document criminal activity, document the results of accident investigations.

Composes written notes at incident scene to document facts used for an incident/offense report.

Completes block entries and checklist information required by incident reports, accident reports, investigation reports, traffic citations, and other MPD forms.

Composes narrative descriptions such as explanations, summaries, and statements required for incident reports, investigation reports, accident reports, other documents.

Draws sketches and diagrams required by accident reports, investigation reports, and other documentation.

Writes departmental equipment inventory reports.

Files traffic citations with clerk's office.

Completes documents necessary to transmit evidence.

Composes and types affidavits setting forth probable cause to obtain valid arrest and/or search warrants.

Distributes work products up the chain-of-command for review purposes.

Files reports in designated locations.

ESSENTIAL FUNCTION: Interacts with citizens in either non-enforcement situations or less serious enforcement situations using slim jims, jumper cables, police vehicles, street locators, radios, car jacks, telephones, State of Alabama Title 13 following general orders to promote good community and public relations.

Describes technical issues to individuals regarding the vehicle code, crime code, rules of criminal procedure, and police procedure.

Describes directions, road conditions, safety issues, and problems to assist the general public.

Informs next of kin and family members of information such as vehicle accident death or injury.

Listens to individuals to evaluate their problems and refer them to appropriate services.

Licenses bars, restaurants and other liquor establishments.

Interviews third parties regarding the behavior of suspected mentally deranged people.

Communicates orally and/or in writing with relatives to gather information and explain circumstances of a juvenile incident.

Explains obligations of offender, procedures for paying fines and requesting hearings and encourages compliance with the law.

ESSENTIAL FUNCTION: Presents public information and educational information to citizen and citizens groups using VCRs, tape recorders, TVs, computers, PA system, McGruff crime dog costumes in order to inform children and civic groups of potentially dangerous situations or other law enforcement issues and promote public safety.

Communicates orally to professional people, area residents, co-workers, other law enforcement officials, and members of the criminal justice system to develop cooperative relationships and learn public safety issues and problems.

Reads educational material and law enforcement related literature to determine presentation materials/topics.

Photographs special events, informational addresses or law enforcement lectures for departmental documentation.

Delivers speeches regarding public safety issues, law enforcement programs, safety education, schools and crime prevention to community organizations and civic groups.

Operates tape recorders, VCRs, and film equipment to provide audio-visual materials during education programs.

ESSENTIAL FUNCTION: Meets with, disseminates information, and coordinates activities with others (other MPD units, other law enforcement agencies, business organizations, social service agencies, hospitals, etc.) using NCIC Reports, telephone, radios, look-out reports, bolos, teletype machines in order to exchange information with law enforcement agencies/MPD officers, verify case-related information (i.e., outstanding warrants).

Provides details of the case with district attorney staff, juvenile probation staff, departmental youth aid officers to assist in evaluation of the case.

Reports status of a serious incident to superiors and requests support resources beyond those available.

Orally advises superiors in situations where the problem is increasing in severity, and/or where the media or others are likely to soon be demanding information.

Meets with corrections, probation and parole personnel to assist them in gathering the facts they need for their recommendations.

ESSENTIAL FUNCTION: Inspects and monitors equipment such as police vehicles, weapons, uniforms, radios, emergency equipment, gas cards, activity sheets following Care and Use of Equipment Manual, General Orders, and PM Schedules in order to ensure equipment is operable and operates in a safe manner.

Inspects patrol vehicle before tour of duty for maintenance problems such as low tire pressure, lack of oil, lack of fuel and other damage to vehicle.

Inventories patrol vehicle standard equipment such as first-aid, radios, etc. before tour of duty to maintain preparedness.

Participates in inspection of personnel and equipment.

Maintains (logs, documents) odometer readings on all assigned vehicles to monitor preventive maintenance.

Examines assigned equipment for dysfunctions and arranges for the necessary maintenance updating and/or replacement.

ESSENTIAL FUNCTION: **Performs self-development and training activities using TVs, newspaper, chalk boards, law enforcement training books, weapons, ammunition, targets and indoor ranges, ear plugs, safety glasses following firearms training manual in order to increase technical and professional proficiency, increase law enforcement knowledge, stay abreast of recent changes regarding law enforcement and legal procedures.**

Monitors local media (newspapers, radio, television) broadcasts to remain cognizant of traffic crime and other problems associated within area.

Reads manuals and other technical materials to keep abreast of changes in law and procedures, to look for new and effective applications, and to increase knowledge.

Attends in-service police-related training.

Attends external training (e.g., seminars and conferences) to learn about changes in law and procedures which can be communicated to subordinates and others.

Reviews departmental manuals, directives, criminal justice textbooks, court decisions, and amendments to the law.

Qualifies quarterly on the police firing range.

Operates assigned specialized equipment to maintain skill proficiency.

Meets with own superior(s) to receive feedback, set goals, and to improve personal competencies and performance.

ESSENTIAL FUNCTION: **Performs administrative duties using copy machines, computer, telephones, and tape recorders in order to distribute information and messages to other officers, prepare case files, document work assignments, update personnel files, maintain permanent records for future reference, prepare for court testimony.**

Files hard copies of reports and documents such as incident memos, citations, warning reports, accident reports, initial investigation reports, and supplementals.

Searches through hard copy files to locate reports or other information requested by various individuals.

Answers telephone and takes messages while on desk duty.

Takes complaints over telephone.

Identifies equipment storeroom discrepancies to ensure essential inventory is present.

Distributes messages and memos.

Attends roll call.

Instructs rookies of appropriate procedures and completes trainee evaluation forms.

Performs assigned specialized details such as sitting with subjects in hospital emergency rooms, transport individuals to specified locations, assist in raids.

ESSENTIAL FUNCTION: **Responds to and investigates traffic accidents using police vehicles, radios, emergency equipment, traffic vests, flashlights, brooms, paper bags, templates, tape measures, paint, skid roller tape, barricades, and traffic cones following Uniform Alabama Traffic Accident Manual, State of Alabama, Title 32, Ticker Book, Hazardous Material Manual in order to determine who is at fault, assist motorists, identify**

circumstances surrounding the cause of the accident, ensure roadways are clear, gather evidence that will identify potential suspects in hit and run accidents, document facts and actions taken during accident investigation.

Requests assistance at traffic accidents or crime scenes from personnel in areas such as medical, fire, towing, investigations, and accident reconstruction to ensure situation is resolved efficiently and safely.

Interviews and advises vehicle operators, victims, and witnesses to determine the cause of an accident, collect evidence, and inform individuals of their rights and responsibilities.

Observes the actions, emotional state, and physical condition of vehicle operators following accident to determine if they need further attention.

Searches the accident scene, gathers any physical evidence (e.g., car parts, paint samples, substance, blood samples) at fatality scenes, serious injury or hit and run.

Examines and operates the equipment of accident vehicle (wheels, brakes, steering) to develop investigative facts.

Measures distance of skid marks and other evidentiary matter using speed and skid calculators to reference objects to determine speed of vehicle.

Follows traceable evidence left by hit-and-run vehicles to identify and find vehicle.

Evaluates facts gathered during the accident investigation to determine the cause, and to determine what type of enforcement action is necessary.

Selects a strategic location (crest of a hill, curve, etc.) to park vehicle at an accident scene to serve as a warning to motorists.

Gathers pre-accident information (fatigue, intoxications, stress, etc.) to determine whether it is related to cause of accident.

Re-interviews witnesses of accident homicide (often days later) to verify their reports and to get signed written statements of how the accident happened.

Locates witnesses and/or drivers at a later point in time (when necessary) to gather information about an accident.

Directs the movement of traffic in the event of possible hazards during road construction, special escorts, closed roadways and oversized vehicles, etc. to ensure public safety and prevent accidents.

Secures accident victims' belongings or property in car to prevent theft by bystanders.

Removes, or arranges to remove, any explosives or hazardous materials at an accident scene to minimize damage to people or environment.

Secures the scene of a traffic fatality by keeping crowds away to preserve evidence when a homicide investigation is required.

Assures accident victims that professional medical help is on the way to keep them calm and prevent them from going into shock.

Determines and records weather and road conditions at an accident scene to identify contributing factors to the cause of an accident.

Checks and records vehicle information (e.g., blowouts, speedometer functioning, volume of the radio) to use as possible evidence in a traffic (homicide) investigation.

Investigates truck-related accidents (by checking driver's logs, truck equipment, etc.) to determine possible cause of accident or violations of law.

ESSENTIAL FUNCTION: Responds to minor and major vehicle code violations using ticket book, radar, police vehicle, radios, intoxilizers, emergency equipment, drivers

licenses, field sobriety tests, Alka-Sensor Tests following DUI book, Title 32, Law Enforcement Officer's Handbook, General Orders in order to ensure motorist comply with vehicle code, and ensure violators of vehicle codes are appropriately cited.

Determines appropriate enforcement action based on result of information gathered from driver and dispatcher (e.g., driver's license check, nature of violation, and DUI field test).

Visually matches information on driver's license (e.g., license's picture, age, hair, and eye color, etc.) with visual examination of driver to verify driver's identity.

Transports motorist requiring a blood alcohol sobriety test to hospital.

Operates patrol vehicle using proper procedures to safely overtake and effectively stop motorists violating vehicle safety regulations.

Positions patrol vehicle at specified locations to observe for possible traffic violations.

Sets-up radar surveillance (i.e., selects sites for radar use, sets-up radar equipment, checks for proper calibration, and operates radar equipment to identify speeding vehicles and properly documents vehicle speeds).

Administers field sobriety tests to determine whether probable cause exists for the enforcement of DUI laws.

Arranges for administration of intoxilizer test to determine blood alcohol content.

Decides whether a traffic citation or a warning will be given.

Advises motorist of unlawful behavior and explains provisions of the law if offender does not understand.

Observes, records, and remembers characteristics of vehicle under surveillance and its occupants to ensure correct identification in the event that the vehicle is temporarily out of the line of vision.

Identifies traffic violators (e.g., speeding, DUI, tailgating, etc.) by attending to visual cues (e.g., apparent speed of vehicle, number of other vehicles passed, lane switching, weaving, etc.).

__KNOWLEDGE, SKILLS AND ABILITIES:__ Ability to detect the signs or effects of alcohol and/or other controlled substance to include recognizing symptoms of behavior, how symptoms effect driving, and when symptoms indicate danger to life.

Ability to deal with mentally ill subjects to include restraint techniques, searching for weapons, etc.

Ability to access departmental computer based information systems to include NCIC, and personal computer files.

Skill in operating motor vehicles to include defensive driving and emergency response driving.

Ability to identify characteristics of the more commonly abused drugs based upon color, smell, shape, packaging size, quantity, and associated paraphernalia.

Ability to conduct field interviews of suspicious persons and formal interviews of witnesses to include preparing for the interview and formatting relevant questions.

Ability to use field sobriety testing kits.

Ability to use field drug testing kits.

Skill in the use of hand guns as needed to pass MPD qualifying standards.

Ability to interpret maps and street guides.

Ability to establish rapport with an informant or possible informant to get information from him or her.

Ability to maintain an objective, professional relationship with an informant, put aside personal feelings, control one's emotions, and remain distant from that individual.

Ability to listen to all points of view to collect relevant information when conducting an investigation and respond in a way that does not further aggravate a situation.

Ability to obtain facts and information by using interviewing skills and techniques and evaluate the information received from confidential informants during face-to-face interactions (i.e., detect physical and verbal responses that suggest deception).

Ability to negotiate a resolution to a conflict that resolves a dispute.

Ability to recognize criminal and deviant behavior patterns.

Ability to handle adolescent behavior and the problems of the juvenile.

Ability to interact with persons of different ethnic or cultural backgrounds with a wide variety of socio-economic backgrounds and to communicate technical law enforcement concepts or general information in non-technical/lay term on their level of understanding.

Ability to interact effectively in non-enforcement situations to include the ability to promote voluntary compliance and good will of public service officials.

Ability to provide leadership and maintain a command presence in day-to-day office activities as well as at incident and emergency scenes and being able to control the behavior of the general public, victims, and other emergency personnel without causing conflict or arousing antagonism.

Ability to exhibit interpersonal sensitivity to include the ability to transmit negative and tragic information in a sensitive and understanding manner.

Ability to demonstrate appropriate patience and tact when dealing with confused, distraught, retarded citizens, angry or slow learning students, etc.

Ability to exhibit the appropriate level of firmness in dealing with others to include suspects to be arrested, emotionally distraught individuals who need to be separated and calmed down in domestic violence or in similar situations.

Ability to listen empathetically to others' personal problem by using appropriate eye contact and body language.

Ability to implement formal training techniques to include developing lesson plans, lecture techniques, and techniques for encouraging student participation.

Ability to implement informal training techniques to trainees to include on-the-spot corrections and demonstrations of appropriate work procedures.

Ability to lay out an investigative strategy for a specific investigation.

Ability to judge when to refer a decision to a superior and when supervisory approval is necessary before decisions are implemented.

Ability to recognize relationships between facts and situations to include detecting normal from abnormal and comprehending what is missing.

Ability to recognize the implications of actions or statements to include anticipating the questions of defense attorneys, anticipating the responses of suspects being interviewed or interrogated, and recognizing possibly sensitive material.

Ability to make decisions and manage one's own time effectively to ensure work responsibilities are accomplished and prioritize activities as needed to deal with several situations and/or problems at the same time.

Ability to recall the particulars of past events, investigations, or situations and apply them to current events, investigations, or situations.

Ability to analyze facts in crisis situations or complex investigations and take proper actions when under these stressful, unpleasant conditions.

Ability to retain, in memory, information received for short time durations until given the opportunity to record the information in writing.

Ability to identify and anticipate the likely consequences of implementing various courses of action in a particular situation and long-term ramifications.

Ability to anticipate the actions that are necessary to prevent a crisis in stressful public safety situations.

Ability to rapidly comprehend the legal rules and statutes that apply in a special situation (e.g., demonstration, strike, natural disaster).

Ability to read and understand written material such as equipment specifications and law enforcement literature.

Ability to be self-critical, recognizing one's areas of personal strength and areas of weakness.

Ability to provide information clearly and concisely to include staying on the subject, paraphrasing information, and using analogies, in order to relate the subject to the listener in a way that they understand.

Ability to speak effectively in front of a group to include giving a speech to a citizen group, making a presentation to a group of peers and/or superiors.

Ability to address citizen groups and to answer their questions and respond to their concerns without prior knowledge of what will be asked.

Ability to understand what is being communicated when listening to citizens' explanations of their actions and attorney's questions.

Ability to follow orally communicated instructions and orders.

Ability to state and explain policies, procedures, and problems in such a way as to enlist support, compliance and acceptance from the public.

Ability to assess cues to determine whether information has been communicated clearly and

Ability to be attentive to the form of questioning in court.

Ability to write using appropriate grammar, sentence structure, punctuation, and spelling.

Ability to express one's self accurately in writing to include reconstructing events, documenting oral statements for later reference, etc.

Ability to write legibly.

Ability to organize facts and present them in the most appropriate and logical order, consistent with the purpose of the written document.

Ability to acquire (learn) new knowledge from reading technical manuals, training bulletins, textbooks, and command memorandums.

Ability to follow written instructions and orders.

Ability to do basic arithmetical computations to include adding, subtracting, dividing and multiplying.

Ability to reduce data to percentage terms and manipulate said data in terms of percentage increases and decreases.

Ability to read and understand statistical information presented in the form of tables, charts and graphs.

Ability to adapt to changes in policies and procedures that govern MPD activities.

Ability to re-think a course of action or decision when presented with new information.

Ability to maintain one's own equipment and one's own personal appearance at a continuing high and appropriate level.

Ability to stick with a task and continue to work effectively on its completion when progress is slow and discouraging.

Ability to maintain integrity and to resist the potential for corruption.

Ability to remember facts and details such as those related to an ongoing investigation or incident on a short term basis without having to refer to written documentation.

Ability to use specialized equipment such as radar equipment, intoxilizer 5000, Alka-Sensor, tint meters, slim jims, surveillance equipment to include operation and preventive maintenance calibration.

Ability to remain attentive in enforcement situations to include remaining cautious and responding to dangerous elements that may cause injury to self or to another officer.

Knowledge of the geographical area of responsibility to include roadways, hospitals, and locations of other enforcement agencies, support services, and disaster shelters.

Knowledge of traffic control procedures to include the position of the vehicle, use of lights, flares, protective clothing, hand signals, and safe traffic flow.

Knowledge of vehicle stop procedures to include traffic violation and known felony stops.

Knowledge of the procedures for responding to domestic disputes and violence to include self-protection, mediating a fight, and approaching the scene.

Knowledge of the general crime prevention patrol procedures to include security checks, identification of stolen vehicles, and varying patrol routes.

Knowledge of 10-code systems and radio code communication symbols.

Knowledge of population and recreation centers and special events that are more likely to have incidents requiring public safety enforcement.

Knowledge of local community issues and situations in one's geographic area of responsibility.

Knowledge of non-MPD and non-law enforcement resources and information sources in one's geographical area of responsibility.

Knowledge of the proper use and maintenance of vehicles.

Knowledge of the proper use and maintenance of radios.

Knowledge of the care and maintenance of service weapons.

Knowledge of the procedures for collecting, preserving and transporting physical evidence to include bagging, labeling, marking, photographing, logging and storing evidence, and chain of custody.

Knowledge of the procedures for lifting latent fingerprints to include locating prints, photographing prints, and recording.

Knowledge of departmental procedures for handling confidential informants to include maintaining confidentiality, maintaining records, approval, and compensation.

Knowledge of investigative procedures as needed to investigate crimes against persons, crimes against property, non-narcotic vice offenses, arson, white collar crime, and drug diversion cases.

Knowledge of the procedures for protecting a motor vehicle accident scene to include warning or re-routing traffic, use of flares, and protecting evidence at the scene.

Knowledge of the methods for photographing and measuring a motor vehicle accident scene.

Knowledge of accident scene investigation techniques as needed to estimate vehicle speed, braking distance, and other related accident factors.

Knowledge of departmental procedures for completing accident reports and related documents.

Knowledge of procedures for the detention and/or arrest of suspects and the related field search of the individual to include suspect approach, handcuff, and field search positions techniques.

Knowledge of procedures for protecting crime scenes and conducting the initial crime scene investigation to include evidence preservation and securing the scene.

Knowledge of procedures (e.g., tear gas, riot formats) for crowd control to include responding to and dealing with civil disturbances, labor disputes, organized protests, natural disasters, and fires.

Knowledge of the laws and policies regarding use of physical force to include the use of deadly force and the minimum physical force required to subdue a person.

Knowledge of applicable laws and court rulings governing arrests with and without a warrant including considerations of exigent circumstances.

Knowledge of appropriate court rulings governing stopping and searching motor vehicles with and without a warrant to include probable cause, and custodial inventory searches.

Knowledge of the rules of evidence to include confessions, dying declarations, issues of admissibility, miranda warnings, confidentiality of information, hearsay, and compulsory testimony.

Knowledge of applicable laws and court rulings governing search and seizure with and without a warrant to include field and protective searches, and the difference between pat-down and full body searches, etc.

Knowledge of the legally correct way to prepare a written affidavit for a search warrant, authorization for a wire tap and other related procedures that require court approval to include the basic elements of affidavits, how to include information from informants, and probable cause.

Knowledge of the applicable laws and court rulings governing DUI enforcement to include "traffic check" type operations, test administration, field sobriety testing, and breath and blood

Knowledge of the applicable laws and court rulings governing domestic violence cases to include arrests without a warrant.

Knowledge of the applicable laws and court rulings governing dependent and delinquent children and child abuse cases to include a juvenile act and mission/exploited Children's Act.

Knowledge of the rules of Criminal Procedures.

Knowledge of the definition of crime, particularly the elements necessary to charge specific offenses to include power and authority of arrests, whether warrant can be obtained, etc. (Title 13)

Knowledge of the classification of crime such as felonies and misdemeanors. (Title 13)

Knowledge of the applicable motor vehicle laws governing moving violation enforcement. (Title 32)

Knowledge of the applicable motor vehicle laws governing non-moving violation enforcement. (Title 32)

Knowledge of the applicable motor vehicle laws controlling the movement of hazardous materials to include the use of placards, looking up or identifying materials, licensing, etc.

Knowledge of available resources for officer assistance programs.

Knowledge of basic first aid procedures to include CPR techniques, treatment for shock, how to stop bleeding, etc.

Knowledge of HIV virus (AIDS) self-protection techniques.

Knowledge of departmental personnel policies regarding transfers, leave, overtime, work assignment, rules of conduct, dress codes, and personal care.

Knowledge of departmental policy on providing information to the media.

Knowledge of the department's chain of command and of policies and procedures governing communications within the chain of command.

Knowledge of department Report Writing Manual to include how to select appropriate forms and how to complete forms.

Knowledge of city ordinances to include noise violations, towing of vehicles, sleeping in vehicles, disorderly conduct, public drinking ordinances, leash laws, city traffic violations and other city public violations.

Knowledge of military time to include how to convert to standard time.

Ability to move controls of a machine or vehicle quickly or repeatedly to exact positions as needed to shift gears on motorcycles while steering, turn vehicle while steering at high speeds, and change gears and operate radio and emergency equipment controls.

Ability to coordinate movements of two or more limbs (for example, two arms, two legs, or one leg and one arm) together while sitting, standing, or lying down as needed to physically detain an individual, climb fences, fire weapons, pursue individuals, and push vehicles.

Ability to choose between two or more movements quickly and accurately when two or more different signals are given and make correct choices as needed to decide whether or not to fire your weapon, decide whether or not to stop or service vehicles, and decide whether to physically grab an individual to detain or take other measures to protect oneself.

Ability to adjust equipment controls in response to changes in the speed and/or direction of a continuously moving object or scene. Involves timing adjustments in anticipating change as needed to avoid accidents when pursuing suspect(s) in vehicles, and steer vehicle when pursuing individuals.

Ability to give one fast response to a signal such as sound, light, picture, etc. as needed to pull fire arms in response to dangerous elements or suspects.

Ability to keep the hand and arm steady while making arm movements and while holding the arm and hand in one position as needed to accurately fire weapons or apply pressure to bleeding wounds.

Ability to make skillful, coordinated movements of one hand, a hand together with its arm or two hands to grasp, place, move, or assemble objects such as hand tools, blocks, etc. Involves the degree to which arm-hand movements can be carried out quickly as needed to direct traffic using hand signals, subdue and arrest individual, steer motorcycles and police vehicles, and fire and reload weapons.

Ability to make skillful, coordinated movements of the fingers of one or both hands to grasp, place, or move small objects (such as nuts, screws, wires, etc.) as needed to pull the trigger on weapons, operate radios, turn on flashlights, and write blocks of texts or field notes.

Ability to make fast, simple, repeated movements of the fingers, hands, and wrists as needed to fire a weapon; operate hand-set on radio; use clutch, brake and throttle on motorcycle; and type reports as forms.

Ability to quickly make a single movement using an arm or leg as needed to block, strike, grab, pull, twist, push, or knee individual when implementing defensive tactics.

Ability to stoop, crouch, or crawl as needed to climb through windows, crawl underneath fences or buildings, stoop under wires, and crouch beneath protective cover.

Ability to climb structures as needed to climb fences and walls, get on roofs, and climb on top of cars.

Ability to walk distances ranging from 50 yards to ½ mile as needed to walk police foot beats, search buildings, walk to scene in areas not accessed by roads or vehicles, and perform ground searches.

Ability to stand in an upright position as needed to direct traffic, observe individuals under surveillance, observe movement of individuals as special events, and observe movement of individual at crime scenes.

Ability to lift objects weighing 25 to 200 pounds as needed to lift tires, intoxicated or injured individuals, debris in the road, and resisting suspects.

Ability to push objects as needed to push vehicles, resisting individuals, garage doors, bay doors, metal gates, and motorcycles.

Ability to use muscle force to pull objects as needed to pull combative individuals, barricade metal gates, pull weapon from holster, and pull wrecked motorcycle from line of traffic.

Ability to carry objects as needed to carry children, shotguns, injured individuals, equipment, barricades, traffic cones, combative individuals, protestors conducting sit-ins, bags of evidence or trash, and street signs.

Ability to exert muscle force repeatedly or continuously over a long period as needed to pursue fleeing suspects for long distances, and subdue combative individuals.

Ability to bend, stretch, twist, or reach out both quickly and repeatedly with the body, arms and/or legs as needed to subdue combative individuals.

Ability to coordinate the movement of the arms, legs, and torso together in activities where the whole body is in motion as needed to subdue combative individuals, pursue fleeing suspects, drive police vehicles and motorcycles.

Ability to maintain or regain one's body balance, or stay upright when in an unstable position as needed to walk along ledges, to walk on top of walls or steep roofs, and to drive motorcycles.

Ability to concentrate on a task and not be distracted as needed to focus on fleeing vehicles, aiming weapons, effecting an arrest, remaining attentive at disturbance calls or crimes in progress, driving police vehicles during pursuit.

Ability to see close objects or surroundings as needed to watch a drug exchange and detect unusual activity.

Ability to see distant objects or surroundings as needed to detect traffic violations, decipher tag numbers, identify vehicle types and models, look for unusual or criminal activity, drive police vehicles and motorcycles, and read street signs and house numbers.

Ability to match or discriminate between colors as needed to describe individuals, vehicles, clothing, tags, and traffic lights.

Ability to see under low light conditions as needed to identify suspects under low light, look for unusual or criminal activity, drive police vehicles at night, fire weapons at night and search areas under low light conditions.

Ability to see objects or movements in the edges of the visual field as needed to drive police vehicles, search for evidence, identify unusual or criminal activity, and see persons approaching from the side.

Ability to judge distances of objects as needed to drive police vehicles, to judge distances between streets or police from the scene, and to estimate distance between officer and suspects/individuals.

Ability to see objects in the presence of glare or bright ambient light as need to see approaching cars with bright lights and to see approaching vehicles with lights in the fog.

Ability to detect and to discriminate among sounds that vary over broad ranges of pitch and/or loudness as needed to detect weapons firing or a vehicle backfiring and an individual screaming in laughter or in fear.

Ability to focus on a single sound in the presence of other distracting and irrelevant auditory stimuli as needed to focus on the conversation with one person while tuning out the crowd, and monitor police radio traffic while handling an incident.

Ability to identify the direction from which a sound originates as needed to locate individuals firing weapons, individuals in distress, fleeing suspects, and identify where alarms are sounding.

Ability to distinguish differences or similarities among odors as needed to identify drugs, detect leaking gas, and recognize an individual has been drinking.

Ability to vocalize orally as needed to give instructions and request assistance.

PHYSICAL REQUIREMENTS: Applicants must be certified by a licensed physician, designated as satisfactory by the appointing authority, to be in good health and physically fit for the performance of duties. Applicants must meet the Police Department's weight standards.

AGE REQUIREMENTS: Applicants must be 21 years of age and certifiable by the Alabama Peace Officer's Standards and Training Commission.

EDUCATIONAL REQUIREMENTS: Graduation from a standard high school or G.E.D. Must successfully complete training required at the Montgomery Police Academy.

SPECIAL REQUIREMENTS: Must have a valid driver's license and the ability to obtain a valid Alabama Driver's License prior to employment.

***ESSENTIAL FUNCTION:** Essential functions are defined by the Americans with Disabilities Act (ADA) as "the fundamental job duties of the employment position the individual with a disability holds or desires. The term essential functions does not include the marginal functions of the position". A person with a disability which is covered by the ADA must be able to perform the essential functions of the job with or without a reasonable accommodation. The list of essential functions is based on a sample of positions and is to be used as a starting point to determine essential functions for a specific position at a specific location at a specific time. The ADA was intended to be applied on a case-by-case basis with the understanding that one position may differ from another similar position.

EXHIBIT 18

MEMORANDUM

TO: A. D. Baylor, Chief
Police Department

FROM: Michael Briddell
Executive Assistant to the Mayor

DATE: January 15, 2008

SUBJ: SUSPENSION OF POLICE OFFICER [redacted] B[redacted]

It is the Mayor's decision to suspend Officer [redacted] B[redacted] for fifteen (15) working days and attend mandatory anger management sessions at the EAP. Upon the completion of his suspension, Officer B[redacted] is to return to the Patrol Division. Please prepare the necessary personnel forms and forward to this office for approval.

Further insure that all the City personnel rules are followed.

APPROVED:

Bobby N. Bright
Mayor

MSB/wsf

For the record it is January 11, 2008. This is a disciplinary hearing for Officer [redacted] B[redacted]. In attendance this afternoon are: Officer B[redacted] his attorney Patrick Mahaney; Major Terry Jett of the Montgomery Police Department; Michael Boyle from the City Attorney's office; Selah Dryer is the recorder for this hearing; and Michael Briddell, Executive Assistant to Mayor Bright. Observers include: Walt Lilley of Internal Affairs, Det. R. D. Carson and Det. J. L. Brosius of MDP.

The purpose today is to hear from both sides in this case so an informed decision can be made by the Mayor. The final decision in this case will be made by Mayor Bright. You have the right to appeal his decision but only if it calls for termination, a demotion or a suspension in excess of thirty (30) days. If you want to appeal, you have to notify the City County Personnel Board within ten (10) days of your receiving the Mayor's decision.

Officer B[redacted] is accused of violating the Department's Duties of Responsible Employment, as it pertains to Duty in the Use of Force. This charge, along with his work history has led to a departmental recommendation of termination. He denied the charge.

Maj Terry Jett said the charges were filed after videotape from a camera inside of the cruiser showed Ofc. B[redacted] strike a suspect in the backseat. Maj. Jett feels when the charge of excessive force is upheld there can be no other departmental recommendation besides termination. He said Ofc. B[redacted] is a good officer and has been received the Officer of the Quarter Award in the past.

Ofc. B[redacted] retold the events of the night of the altercation. It occurred at 3:00 a.m. with a crack abuser who B[redacted] has encountered numerous times before. The suspect, [redacted] Brown had threatened to kill a convenience store employee and was resisting arrest. During the scuffle, Brown tripped himself and B[redacted] into the roadway as an 18-wheel tractor trailer was approaching. B[redacted] moved Brown to safety first as Lt. Kenney was able to divert the truck from hitting B[redacted]. B[redacted] said Brown continued to resist as he was placed in the car and threatened to kill Ofc. B[redacted]. After Brown was secured by the seatbelt, B[redacted] said he was pushing himself out of the backseat of the cruiser and accidentally made contact with Brown's face.

B[redacted] explained he loves police work, but has been assigned to the jail while this case is pending. He asks that the Mayor's ruling be sent to his attorney's office: Patrick Mahaney, 505 South Perry Street, Montgomery, AL 36104.

The hearing concluded around 3:30 p.m.

MEMORANDUM

To: Chief A. D. Baylor

From: Lt. Colonel K. J. Murphy

Subject: Meeting with Officer [redacted] B[redacted]

Date: November 1, 2007

On Thursday, November 1, 2007, at 0745 Hours, Chief Baylor met with Officer [redacted] B[redacted] regarding his recent disciplinary trial board. Sergeant C. A. Wingard and I were present at the meeting. Chief Baylor opened the meeting by asking Officer B[redacted] to explain the incident regarding the alleged abuse of force against Mr. [redacted] Brown that occurred on August 8, 2007 at approximately 0325 Hours.

Officer B[redacted] stated he did not remember striking Mr. Brown, and that he was merely "pushing off of him" while exiting the rear cabin of the patrol vehicle. Chief Baylor played the video of the incident to Officer B[redacted]. Officer B[redacted] then stated it was clear to him he did strike Mr. Brown, but that he did it with an "open hand".

I cautioned Officer B[redacted] that he was minimizing the event and that after viewing the recording several times, the punch to Mr. Brown's face appeared to be a "cheap shot". I asked Officer B[redacted] what it appeared to be to him, and he replied "a cheap shot".

Officer B[redacted] admitted the video clearly illustrates that he violated police department rules and regulations. Chief Baylor told Officer B[redacted] that he was upholding the recommendation of dismissal for violation of Article II, Section 2.180: Duty in the Use of Force. This was the original charge brought against Officer B[redacted] by his division commander. The trial board further recommended that Officer B[redacted] be charged with violation of Article I, Section 3.315: Conduct Unbecoming an Officer. Chief Baylor advised Officer B[redacted] he was not upholding this charge as it was redundant [to the first charge].

Officer B[redacted] advised Chief Baylor he would make arrangements to appeal the decision to Mayor Bright. Before being dismissed I told Officer B[redacted] that if he prevailed in this matter he needed to have some deep self-reflection as to his conduct and ability to handle frustration and anger. It was my opinion from supervising him for the past three years that he needs to practice more self-control. Officer B[redacted] thanked us for our time and departed at 0816 Hours.

MEMORANDUM

TO : Chief Arthur D. Baylor

FROM : Lt. Colonel W. S. Thompson

DATE : October 15, 2007

SUBJECT : Trial Review Board on Officer [redacted]B[redacted]

The Trial Board met on Thursday, October 18, 2007 at 1330 hours to hear the charges and specifications as follows:

Charge I. Duties of Responsible Employment; Duty in the Use of Force

Charge I. Sustained

Charge II: Conduct Unbecoming an Officer
This is an additional charge the Trial Board determined was warranted.

Charge II. Sustained

It is the Boards recommendation that Officer B[redacted] be terminated from the Montgomery Police Department. The vote was unanimous.

EXHIBIT 19

12/28/05
Major Reid advised of this in the P.M. & Cpl. [redacted] will be going to EAP on 12/29/05 & will not return to work until he has been cleared by a Professional. (Briddell advised of John Carnell)
AD

MEMORANDUM

To: Major T. W. Reid

From: Captain J. D. McQueen

Date: December 28, 2005

Subject: Corporal B.[redacted]

Major,

Sergeant W. E. Herman contacted me by phone and explained to me that Corporal [redacted] requested to see me in regards to his current assignment at Capitol Heights Jr. High School. Corporal [redacted] came to my office accompanied by Sergeant Herman. Corporal [redacted] explained to me that he was having some problems coping with his current assignment at the school and that he had problems controlling his temper, particularly when dealing with the students and at some times he felt that he wanted to hurt them. He went on to say that he could not help himself, and that he knew that it was wrong, but he had a severe problem with cursing at the students and their parents when he had to deal with a situation in the school. I asked Corporal [redacted] when he began to have these problems and he advised that it became prominent upon him returning from his deployment to Cuba where he had to deal with prisoners and detainees who were considered terrorist threats.

Corporal [redacted] advised me that while in Cuba he received a letter from his wife requesting a divorce, which was handled immediately upon his return from deployment. [redacted] went on to say that soon after that his sister committed suicide and that he has been having a hard time dealing with her loss. At this point Corporal [redacted] broke down and began to weep and advised that he was having to move his elderly father into his home and that he was having to make arrangements to acquire living quarters for him through his bank which is causing an additional financial burden to him. Corporal [redacted] also advised that his wife is now pregnant and that between them they have 9 children. He stated that he is having problems with some of his children wanting to quit school. Corporal [redacted] went on to say that after dealing with the children in his school it is hard for him to leave his work at the school and when he returns home he finds himself having to deal with his 4 year old child once again bringing the feelings he has at his school to the surface.

After speaking with Corporal [redacted] I asked him if he had spoken to anyone about the way he was feeling and he advised me that he had only spoken to his pastor at church and the departmental pastor. I asked him if after speaking with these individuals if he was still experiencing the anger emotions and he advised "yes". Corporal [redacted] advised that he thought that he could control his anger but that he could not help the fact that at times he wanted to hurt the students that he worked around in Capitol Heights.

After speaking with Corporal [redacted] face to face, I feel that this officer needs to speak to a professional in regards to his anger issue in dealing with his current job assignment. I feel strongly that Corporal [redacted] should be placed on leave until seeing a professional counselor and it is determined that he is fit for duty.

1/13/06 Approved Per attached memo's AB

MEMORANDUM

TO : Chief A. D. Baylor AB

FROM : Major T. W. Reid TWR

DATE : January 13, 2006

SUBJECT : FITNESS FOR DUTY OF CORPORAL B. [redacted]

As of December 28, 2006, Corporal [redacted] was placed on sick leave after complaining to Captain J. D. McQueen that he was under stress and taking is frustrations out on the public. On December 29, 2006 Corporal [redacted] met with Linda Holmberg, LPC, of the American Behavioral Benefits Managers (EAP). As of January 12, 2006, Corporal [redacted] has met with the EAP 3 times. Corporal [redacted] was referred to his personal physician, Daniel Banach, MD, who prescribed anti-depressants to him at the recommendation of the EAP. Corporal [redacted] has also met with Dr. Babatude Abolade, MD, of Alabama Psychiatric Services, PC. Corporal [redacted] will continue on his medications and see Linda Holmberg once a week.

On Thursday, January 12, 2006, Captain McQueen met with John Carnell, Risk Management Division, in reference to Corporal B. [redacted] All of the information from the different counselors and doctors was presented to Mr. Carnell. Mr. Carnell concurred with the findings and recommended that Corporal [redacted] return to normal duty. I met with Mr. Carnell on January 13, 2006 and requested that his recommendation be placed in writing. Mr. Carnell's written recommendation is attached to this package. Mr. Carnell made no additional stipulations when recommending that Corporal [redacted] return to normal duty.

It is my opinion, given the above recommendations and after speaking with Corporal [redacted], that Corporal [redacted] is fit for normal duty. I am requesting that he be allowed to return to regular duty when the School Enforcement Bureau's normal duty hours resume Tuesday, January 17, 2006.

Risk Management Division

Memo

To: Chief Art Baylor

From: John Carnell

CC: Major Terry Reid

Date: January 13, 2006

Re: B[redacted]

In regards to Cpl. B[redacted] and his fitness for duty, I concur with the recommendations of the Employee Assistance Program Counselor and the Psychiatrist. Dr Babatunde Abolade and Linda Holmberg both have recommended that he be returned to full duty.

EXHIBIT 20

April 3, 2001

POLICE DEPARTMENT

MEMO FROM THE CHIEF'S OFFICE

To: Major L. Armstead Division Patrol

Subject:

The forty-five (45) calendar day suspension of Police Officer [redacted] M[redacted] has been approved and will be effective April 4, 2001 - May 18, 2001. Officer M[redacted] off days are Thursday and Friday and they **ARE NOT** to be changed during this suspension.

John H. Wilson
Chief

cc: Lt. Col. H.E. Cody
Lt. Col. M.B. Pierce

Ex. I

CRADLE OF THE CONFEDERACY

City of Montgomery Alabama

BOBBY BRIGHT
Mayor

MONTGOMERY CITY COUNCIL
ALICE D. REYNOLDS-Pres.
JAMES A. NUCKLES-Pres. Pro tem
WILLIE COOK
TERANCE D. DAWSON
CHARLES W. JINRIGHT
TRACY LARKIN
B.J. (BEN) MCNEILL
P.E. (PEP) PILGREEN
CHARLES W. SMITH

MEMORANDUM

TO: Chief J.H. Wilson

THROUGH: Major L. Armstead

FROM: Captain S.H. McMahon

DATE: March 5, 2001

SUBJECT: Request for Hearing Before the Department Review Board on March 15, 2001 for Officer [redacted] M[redacted]

The below charges and specifications as outlined in regards to Violation of Departmental Policies on the part of the above named employee are as follows:

Charge I: Violation of Article I, Section 1.330, Truthfulness at All Times, of the Manual of Rules and Regulations Governing the Montgomery Police Department, which reads as follows:

DUTIES OF RESPONSIBLE EMPLOYMENT

> Every member or employee is obligated to faithfully discharge his employment for so long as he is employed with the Department. This responsibility includes but is not limited to:
>
> Truthfulness At All Times

Specification I: On August 15, 2000, Officer [redacted] M[redacted], was interviewed by Internal Affairs concerning his testing positive for Cocaine as specified in the Litigation Support Packet from Fort Meade Forensic Toxicology Drug Testing Laboratory. According to Officer M[redacted], he advised the Military Board Hearing on October 2nd, 1999, that he worked Third Shift Patrol the night prior to his drug screen test and that he was exposed to Crack Cocaine during that time. This did not happen because he was working First Shift Patrol during that time. In fact, Officer M[redacted] entire reasoning as to how he tested positive for Cocaine, because of arresting subjects with Cocaine while on Third Shift, is untrue. Officer M[redacted] admits that he did not come into contact with drugs prior to his drug screen on page 18 of the statement that he gave to Internal Affairs.

BOBBY BRIGHT
Mayor

CRADLE OF THE CONFEDERACY

City of Montgomery Alabama

MONTGOMERY CITY COUNCIL
ALICE D. REYNOLDS–Pres.
JAMES A. NICKLES–Pres. Pro tem
WILLIE COOK
TERANCE D. DAWSON
CHARLES W. JINRIGHT
TRACY LARKIN
B.J. (BEN) MCNEILL
P.E. (PEP) PILGREEN
CHARLES W. SMITH

Charge II: Violation of Article I, Section 1.330, of the Manual of Rules and Regulations Governing the Montgomery Police Department, which reads as follows:

DUTIES OF RESPONSIBLE EMPLOYMENT

> Every Member and employee is obligated to faithfully discharge his employment for so long as he is employed with the Department. This responsibility includes but is not limited to:
>
> Prompt and Accurate Reporting of all Official Matters.

Specification II: On or about October 2, 1999, Officer [redacted] tested positive for Cocaine during a Military Drug Screening by Alabama Army Reserves. Officer [redacted] did not contact his supervisors or this Department that he tested positive for Cocaine. He stated that he did not know he had to inform his supervisor of the positive results of his Military Screening Test because he was cleared of the charges. Officer [redacted] was cleared on the charges based on the fabricated and untrue statements he gave to the Board Hearing in an attempt to justify why he had Cocaine in his system. A Military Board Hearing involving a Police Officer with an accurate test result of positive for Cocaine is a very serious matter and should not have been dismissed as Officer [redacted] did.

COL. JOHN H. WILSON
Chief of Police
P.O. DRAWER 159, MONTGOMERY, ALABAMA 36101-0159
(334) 241-2[illegible]
FAX (334) 241-2[illegible]

EX I

CRADLE OF THE CONFEDERACY

City of Montgomery Alabama

BOBBY BRIGHT
Mayor

MONTGOMERY CITY COUNCIL
ALICE D. REYNOLDS–Pres.
JAMES A. NUCKLES–Pres. Pro tem
WILLIE COOK
TERANCE D. DAWSON
CHARLES W. JINRIGHT
TRACY LARKIN
B.J. (BEN) MCNEILL
P.E. (PEP) PILGREEN
CHARLES W. SMITH

Page 3 of 3
Charges and Specifications
Officer [redacted] M[redacted]

Charge III: Violation of Article I, Section 1.417, of the Manual of Rules and Regulations Governing the Montgomery Police Department, which reads as follows:

DRUG AND ALCOHOL ABUSE POLICY

III DRUG AND ALCOHOL SCREENING

(A) FOR ALL CITY OF MONTGOMERY EMPLOYEES

2. TESTING BASED ON REASONABLE SUSPICION DURING EMPLOYMENT:

   d. Information concerning recent drug or alcohol use by the employee, from a reliable and credible source

Specification III: According to Attorney Dennis Wright, who is with the Attorney General's Office, Officer [redacted] M[redacted] had gone before a Military Board Hearing in order to maintain his position in the United States Army Reserves, due to him testing positive for Cocaine during the Military Drug Screening that took place on October 2, 1999. The Litigation Support Packet, certified by Anna M. Brown, Fort Meade Forensics Toxicology, on May 21, 2000, contains the documents and tests revealing that Officer M[redacted] did have Cocaine in his system. At no time did Officer M[redacted] advise a supervisor or administrator of these facts. Officer M[redacted] is in direct violation of the Drug and Alcohol Abuse Policy in the aforementioned considering the fact that the United States Military Drug Screening Process is a reliable and credible source as stated in the charge listed above.

COL. JOHN H. WILSON
Chief of Police

P.O. DRAWER 159, MONTGOMERY, ALABAMA 36101-0159

(334) 241-2[illegible]
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EXHIBIT 21

MEMORANDUM

TO: Lt. Colonel Mable B. Pierce
Police Department

FROM: Jeff Downes
Executive Assistant to the Mayor

DATE: November 17, 2004

RE: SUSPENSION OF CAPTAIN [redacted] W[redacted]

It is the Mayor's decision to suspend Captain [redacted] W[redacted] for thirty (30) working days as stated in your recommendation dated November 16, 2004. Please prepare the necessary personnel forms and forward them to this office for approval.

Further insure that all the City personnel rules are followed.

APPROVED:

Bobby N. Bright
Mayor

JDD/wsf

MEMORANDUM

TO Lt. Col. M. B. Pierce

FROM: Major H. C. Forte, #391

DATE: November 12, 2004

SUBJECT: **REQUEST FOR HEARING BEFORE DEPARTMENTAL REVIEW BOARD ON DECEMBER 1, 2004 FOR CAPTAIN [redacted] W[redacted]**

The below charges and specifications as outlined in regards to violation of Department Policy on the part of the above named employee are as follows:

CHARGE I: Violation of Article I, Section 1.330 of the Manual of Rules and Regulations governing the Montgomery Police Department which reads as follows:

DUTIES OF RESPONSIBLE EMPLOYMENT

Every member and employee is obligated to faithfully discharge his employment for so long as he is employed with the Department. This responsibility includes but is not limited to:

- **Engaging in business which, because of his employment, may reflect negatively on the interest of the Department or the individual member or employee.**
- **Engaging in activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the Department.**

SPECIFICATION I: It is alleged that Capt. [redacted] W[redacted] formed a friendship/association with Mr. J[redacted] W[redacted], white male, D.O.B. 12/6/66, who is known to participate in criminal activity. On 01/24/94 Mr. W[redacted] was charged with Violation of Gun Control Act Falsifying Federal Firearms Records. On 10/18/01 Mr. W[redacted] was charged with Smuggling False Declaration/ Importation of Firearm Magazines Introducing Magazines by False Customs Declaration. This agency arrested Mr. W[redacted] on 07/25/99 for Theft of Property 1st. Capt. W[redacted] acknowledged during taped interviews that he was familiar with the criminal activity of Mr. W[redacted]. Capt. W[redacted] has had an association with Mr. W[redacted] for the last 18 years. Capt. Wilson has also purchased a weapon from Mr. W[redacted] as recent as 2001. Capt. W[redacted] has numerous phone conversations and occasional meetings with Mr. W[redacted]. He has also admitted to discussing departmental business with Mr. W[redacted]. His association with Mr. W[redacted] has been as recent as August 2004.

CHARGE II: Violation of Article II, Section 2.027 of the Manual of Rules and Regulations governing the Montgomery Police Department which reads as follows:

ASSOCIATING WITH CRIMINAL ELEMENT

No member or employee, except in the discharge of duty, may knowingly associate with persons engaged in unlawful activities.

SPECIFICATION II: It is alleged that Capt. [redacted] W[redacted] formed a relationship/association with Mr. J[redacted] W[redacted], who is known to participate in criminal activity. On 01/24/94 Mr. W[redacted] was charged with Violation of Gun Control Act Falsifying Federal Firearms Records. On 10/18/01 Mr. W[redacted] was charged with Smuggling False Declaration/Importation of Firearms Magazines Introducing Magazines by False Customs Declaration. This agency arrested Mr. W[redacted] on 07/25/99 for Theft of Property 1st. Capt. W[redacted] purchased a weapon from Mr. W[redacted] in 2001 after already knowing of his criminal activity and questionable character. Capt. W[redacted] has continued to have a long lasting association with Mr. W[redacted]. Because of his association with a known criminal, Capt. W[redacted] has discredited himself and the Police Department. His relationship with Mr. W[redacted] has potentially destroyed or damaged the confidence and trust that was placed upon him by his subordinates, supervisors, and the Police Department.

CHARGE III: Violation of Article I, Section 1.247 of the Manual of Rules and Regulations governing the Montgomery Police Department which reads as follows:

COMPUTER USE AND SECURITY

Using City owned or maintained computer equipment or computer/radio equipment to transmit or receive data or voice signals which are unprofessional in content and not directly work related and which contain any derogatory racial or sexual expressions or connotations.

SPECIFICATION III: It is alleged that on September 24, 2004, Capt. [redacted] W[redacted] sent an email to two individuals of images of a white female exposing her breast. This email was titled "How to unfold the flag". The content of this email was very unprofessional and distasteful.

PREVIOUS RECORD CONSIDERED

EXHIBIT 22

MEMORANDUM

TO: Arthur D. Baylor, Chief
Police Department

FROM: Michael Briddell
Executive Assistant to the Mayor

DATE: July 20, 2007

SUBJ: SUSPENSION OF POLICE OFFICER [redacted] W[redacted]

It is the Mayor's decision to suspend Police Officer [redacted] W[redacted] for thirty-five (35) working days as stated in your memo dated July 11, 2007. Please prepare the necessary personnel forms and forward them to my office for approval.

Further insure that all the City personnel rules are followed.

APPROVED:

Bobby N. Bright
Mayor

MSB/wsf

July 6, 2007

Memorandum

To: Chief A. D. Baylor

From: Major K. J. Murphy

Subject: Request Hearing Before the Departmental Review Board, Wednesday, August 2, 2006 at 0930 Hours for Officer [redacted]W[redacted]

The below charges and specifications as outlined in regards to violation of Departmental Policy on the part of the above named employee are as follows:

Charge I: Violation of Article I, Section 1.330 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duties of Responsible Employment

In addition to the requirements of responsible employment, there are prohibitions that are necessary to the maintenance of public confidence and trust. These prohibitions include but are not limited to:

Engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the department

Specification I: On Friday, February 23, 2007, at 0325 Hours, Officer W[redacted] conducted a traffic stop where Mr. [redacted] Sunday, who was suspected of driving under the influence. While administering Mr. Sunday a field sobriety test, Officer W[redacted] ordered Mr. Sunday perform a "chicken dance" where he was required to squat, waddle, and flap his arms as if he were a chicken. Mr. Sunday was required to do this more than once. The incident was captured on video tape. Also present at the incident was [redacted], a passenger in the vehicle with Mr. Sunday.

Officer W[redacted]'s behavior reflects negatively on the reputation of the Montgomery Police Department. The manner in which Officer W[redacted] handled the traffic stop reflects negatively on his ability to perform his duty in a professional and responsible manner.

Charge II: Violation of Article I, Section 1.330 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duties of Responsible Employment

In addition to the requirements of responsible employment, there are prohibitions that are necessary to the maintenance of public confidence and trust. These prohibitions include but are not limited to:

Respect Toward the Public

Specification I: Regarding the aforementioned traffic stop, Officer W[redacted] failed to display to Mr. [redacted] Sunday the proper level of respect. As a Montgomery police officer, Officer W[redacted] is required to treat citizens in a dignified manner. Officer W[redacted] failed to treat Mr. Sunday in a manner that conveyed respect and value as a person.

EXHIBIT 24

Candida Stokes

v.

The City of Montgomery, Arthur Baylor, Chief of Police, Bobby Bright, Mayor, in their individual and official capacities

Supplemental Declaration of Candida Stokes

My name is Candida Stokes and I reside at 2215 Taylor Mill Road, Elba Alabama 36323. I am a citizen of the United States and a resident of the State of Alabama. I am over the age of nineteen (19) and make this Declaration based on facts personally known to me. The following is true and correct to the best of my knowledge:

1. In 1994, I began working in law enforcement.

2. I was diagnosed with major depression when I was sixteen years old. I have received treatment on and off since that time. In 2002, I returned to counseling and began seeing a psychiatrist. I was still attending this counseling as well as the scheduled appointments with my psychiatrist in December 2005 when I attempted suicide. The incident on December 19, 2005 was the first time I attempted to commit suicide. I have not attempted suicide since. The suicide attempt occurred inside my own home. I was not on duty at the time.

3. Although I was eligible for a lateral transfer within the Department in February of 2004 and timely requested such a transfer after I became eligible, the Department never granted my request.

4. In January 2006, after I learned that the Department was not going to allow me to return to my job as a corporal, I felt that I had been treated unfairly. I did not think the

law allowed employers to treat me the way that the Department was treating me. However, I did not know a lot about employment discrimination law, so I began to do some research. I looked on the internet and read a lot of articles about people with disabilities. Specifically, I read about people with mental disabilities and how employers were supposed to give reasonable accommodations to people with disabilities. I learned that major depression was considered a disability under the law and I thought that the Americans With Disabilities Act applied to people like me.

5. During the investigation by Internal Affairs, I was interviewed by an Investigator. I told the Investigator about my depression and the events that led up to my suicide attempt. I also explained that I had completed an in-patient and out-patient treatment program and was currently enrolled in counseling and under the continuing care of a doctor. I told the Investigator that I was fit to return to my position as a corporal with the Department.

6. Before the Major's hearing, I did even more research into the EEOC rules concerning police officers and people with mental illnesses. I wanted to be prepared and able to assert my rights in front of the Majors.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 26 day of August, 2008.

Candida Stokes

CANDIDA STOKES

EXHIBIT 23

MEMORANDUM

TO: Arthur D. Baylor, Chief
Police Department

FROM: Michael Briddell
Executive Assistant to the Mayor

DATE: February 15, 2007

SUBJ: SUSPENSION OF POLICE CORPORAL [redacted] D[redacted]

It is the Mayor's decision to suspend Police Corporal [redacted] D[redacted] for thirty (30) working days. During this time, Corporal D[redacted] is to undergo EAP counseling for anger management. At the conclusion of the suspension, an EAP professional will determine if Corporal D[redacted] is fit to return to duty. Upon receiving clearance, Corporal D[redacted] will resume duty and his pay will resume. Please prepare the necessary personnel forms and forward them to my office for approval.

Further insure that all the City personnel rules are followed.

APPROVED:

Bobby N. Bright
Mayor

MSB/wsf

MEMORANDUM

TO : Chief Arthur D. Baylor

FROM : Major B. M. Mitchell BMM

DATE : January 10, 2007

SUBJECT : Trial Review Board

The Trial Board met on Friday, January 10, 2007 at 0930 hours to hear the charges and specifications as follows on Corporal [redacted]D[redacted]:

Charge I. Duty in the Use of Force

Charge II. Duties of Responsible Employment; Engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the department

Charges I & II were sustained.

The Board recommends that Corporal D[redacted] be terminated from the Montgomery Police Department. The vote was unanimous.

January 3, 2007

Memorandum

To: Chief A. D. Baylor

From: Major Kevin J. Murphy

Subject: Request Hearing Before the Departmental Review Board, Friday, January 12, 2007 at 0930 Hours for Corporal [redacted] D[redacted]

The below charges and specifications as outlined in regards to violation of Departmental Policy on the part of the above named employee are as follows:

Charge I: Violation of Article II, Section 2.180 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duty in the Use of Force

> A member may use only that force necessary to effect an arrest or otherwise accomplish an assigned task lawfully. Each member is specifically charged with knowing and remaining competent in the law of the State with regards to when and how force may be used.
>
> Force that an officer uses to gain control over a subject is divided into the following categories:
>
> Officer/Prisoner-Verbal Direction
> Empty Hand Control
> Oleoresin Capsicum Aerosol Restraint
> Electronic Incapacitation Devises
> Intermediate Force
> Lethal Weapons

Specification I: On Saturday, July 8, 2006, at 0619 Hours, Corporal D[redacted] arrested [redacted] for giving a false name to a law enforcement officer. An altercation ensued between [redacted] and four officers. After R[redacted] was handcuffed, Corporal D[redacted] struck him in the face with his fist.

Officer G[redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 11, 2006, at 1424 Hours. On page 9, line 1 of his statement he reported:

"Ah, at some point Corporal D[redacted] hit him in the face with his fist".

Page 9, line 12 of Officer [redacted]'s statement:

"Ah, ah that's when Corporal [redacted] took a swing at him and hit him".

Page 10, line 24 of Officer [redacted]'s statement:

"...ah, Corporal [redacted] hit him in the side of his neck with his baton".

Page 13, line 7:

"That's when he punched him he kind of, that's when he, he stopped resisting. Ah, and that, I, it, when it happened I thought he just hit him in the stomach, try to get him in the car ah, but when I came up and smelled the mace, then that's when, when he, you could see him you know, you know, gotta inhale".

Corporal [redacted] [redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 13, 2006, at 0834 Hours. On page 9, line 20 of his statement he reported:

"Ah, as soon as he's handcuffed, we all stand up and back off of him and he sits up. And that's when Corporal [redacted] punched him on the, just kind of slapped him with his fist on the left, on the right side of his head with his left hand. And then he hit him on the left side of his neck with the baton in his right hand".

Page 10, line 7:

Q: How many times did Corporal [redacted] hit him after he was seated and in handcuffs?
A: Just the one time on the head. And the second time with the baton.

Officer [redacted] [redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 8, 2006, at 1251 Hours. On page 7, line 4 of his statement he reported that after [redacted] [redacted] was handcuffed:

"He [[redacted]] struck him in the be the left side of the neck area with his baton".

Page 7, line 22:

"...Corporal [redacted] just slapped him twice in the face".

Page 8, line 21:

"...he's choking the guy out. And the guy's like gasping".

Corporal [redacted] used unnecessary force on [redacted] [redacted] after he was handcuffed.

Charge II: Violation of Article I, Section 1.330 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duties of Responsible Employment

Every member and employee is obligated to faithfully discharge his employment for so long as he is employed with the department. This responsibility includes but is not limited to:

***

In addition to the requirements of responsible employment, there are prohibitions that are necessary to the maintenance of public confidence and trust. These prohibitions include but are not limited to:

Engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the department.

Specification I: Corporal D[redacted] conduct and actions in the aforementioned arrest reflect negatively on the reputation of the Montgomery Police Department. Furthermore, Corporal D[redacted] failed to specify in his court affidavit or his initial departmental documentation of the specific force that he used on [redacted] R[redacted]. By not properly documenting the use of force, Corporal D[redacted] integrity is impeachable by members of the police department, components of the judicial system, and the citizens of the City of Montgomery.